

SUPREME COURT OF INDIA

CIVIL WRIT PETITION 829 / 2013

IN THE MATTER OF:

S.G. VOMBATKERE & ANR.

...PETITIONERS

*Versus*

UNION OF INDIA & ORS.

...RESPONDENTS

COMPILATION

VOLUME II

APPLICABLE INDIAN LAWS &  
INTERNATIONAL CONVENTIONS

*(See Inside for Index)*

Submitted on behalf of the Petitioners

**VOLUME II**

**APPLICABLE INDIAN LAWS & INTERNATIONAL CONVENTIONS**

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# The Constitution of India

*as amended by*  
**The Constitution (Ninety-seventh Amendment)  
Act, 2011**

*along with*  
**SHORT NOTES**

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# THE CONSTITUTION OF INDIA

## PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a <sup>1</sup>[SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens:

JUSTICE, social, economic and political;  
LIBERTY of thought, expression, belief, faith and worship;  
EQUALITY of status and of opportunity;  
and to promote among them all  
FRATERNITY assuring the dignity of the individual and the <sup>2</sup>[unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

## COMMENTS

The objectives specified in the Preamble contain the basic structure of our Constitution, which cannot be amended in exercise of the power under article 368 of the Constitution. For the theory of "basic structure". See the following judgments of the Supreme Court; *Keshavananda Bharati v. State of Kerala*, AIR 1973 SC 1461; paragraphs 292, 437, 599, 682 and 1164; *Minerva Mills Ltd. v. Union of India*, AIR 1980 SC 1789.

## PART I

### THE UNION AND ITS TERRITORY

1. Name and territory of the Union.—(1) India, that is Bharat, shall be a Union of States.

<sup>3</sup>[(2) The States and the territories thereof shall be as specified in the First Schedule.]

(3) The territory of India shall comprise—

(a) The territories of the States;

<sup>4</sup>[(b) the Union territories specified in the First Schedule; and]

(c) such other territories as may be acquired.

2. Admission or establishment of new States.—Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

<sup>5</sup>[2A. Sikkim to be associated with the Union.—[*Rep. by the Constitution (Thirty-sixth Amendment) Act, 1975, sec. 5(a) (w.e.f. 26-4-1975).*]]

3. Formation of new States and alteration of areas, boundaries or names of existing States.—Parliament may by law—

(a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 2(a), for "SOVEREIGN DEMOCRATIC REPUBLIC" (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 2(b), for "unity of the Nation" (w.e.f. 3-1-1977).

3. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 2(1)(a), for clause (2) (w.e.f. 1-11-1956).

4. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 2(1)(b), for sub-clause (b) (w.e.f. 1-11-1956).

5. Article 2A was earlier inserted by the Constitution (Thirty-fifth Amendment) Act, 1974, sec. 2 (w.e.f. 1-3-1975).

11. Parliament to regulate the right of citizenship by law.—Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.

### PART III FUNDAMENTAL RIGHTS

#### General

12. Definition.—In this part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

#### COMMENTS

Unaided private schools over which the Government has no administrative control are not “State” within the meaning of article 12; *Salimbla Sharma v. St. Paul's Senior Secondary School*, AIR 2011 SC 2926; JT 2011 (8) SC 611; 2011 (6) SLT 250; 2011 (5) SLR 427.

13. Laws inconsistent with or in derogation of the fundamental rights.—

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,—

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

#### COMMENTS

(i) Article 13(2) clearly prohibits the making of any law by the State which takes away or abridges rights, conferred by Part III of the Constitution. In the event of such a law being made, the same shall be void to the extent of contravention; *State of Punjab v. Dalbir Singh*, 2012 AIR (SC) 1040; 2012 (3) SCC 346; 2012 (2) JT 300; 2012 (2) SCALE 126.

(ii) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine; *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal*, AIR 2010 SC 1476.

#### Right to Equality

14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

#### COMMENTS

(i) Concept of equality is a positive concept. Court can command the State to give equal treatment to similarly situated persons but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. Article 14 cannot be invoked for perpetuating irregularities or illegalities, *Usha Mehta v. Government of Andhra Pradesh*, 2012 (11) JT 154; 2012 (10) SCALE 468; 2012 (8) SLT 101.

(ii) The *vires* of any subordinate legislation can be challenged that it is arbitrary, unreasonable and offends article 14 of the Constitution; *Sudhir Kumar Consul v. Allahabad Bank*, (2011) 3 SCC 486; JT 2011 (2) SC 418; (2011) 2 SCALE 661.

1. Ins. by the Constitution (Twenty-fourth Amendment) Act, 1971, sec. 2 (w.e.f. 5-11-1971).

(iii) Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf; *Bondu Ramaswamy v. Bangalore Development Authority*, (2010) 7 SCC 129: JT 2010 (6) SC 57: (2010) 5 SCALE 70.

(iv) A person is treated unequally only if that person is treated worse than others, and those others (the comparison group) must be those who are "similarly situated" to the complainant; *Glaurock Estate (P) Ltd. v. State of Tamil Nadu*, (2010) 10 SCC 96: JT 2010 (9) SC 568: (2010) 9 SCALE 270.

**15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.**—(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

- (a) access to shops, public restaurants, hotels and places of public entertainment; or
- (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

<sup>1</sup>[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

<sup>2</sup>[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

#### COMMENTS

Article 15(4) is only an enabling provision and it is for the respective States either to enact a legislation or issue an executive instruction providing reservation. Article 15(4) is discretionary and no writ can be issued to effect reservation. Such special provision may be made not only by the Legislature but also by the executive; *Dr. Giltshan Prakash v. State of Haryana*, AIR 2010 SC 288.

**16. Equality of opportunity in matters of public employment.**—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office<sup>3</sup>[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

1. Added by the Constitution (First Amendment) Act, 1951, sec. 2 (w.e.f. 18-6-1951).

2. Ins. by the Constitution (Ninety-third Amendment) Act, 2005, sec. 2 (w.e.f. 20-1-2006).

3. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for certain words (w.e.f. 1-11-1956).

<sup>1</sup>[(4A) Nothing in this article shall prevent the State from making any provision for reservation <sup>2</sup>[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

<sup>3</sup>[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

#### COMMENTS

It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under article 16. The guarantee of a fair consideration in matters of promotion under article 16 virtually flows from guarantee of equality under article 14 of the Constitution; *Union of India v. Hemraj Singh Chaulian*, AIR 2010 SC 1682.

17. Abolition of untouchability.—“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

18. Abolition of titles.—(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.

#### Right to Freedom

19. Protection of certain rights regarding freedom of speech, etc.—(1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions <sup>4</sup>[or co-operative societies];
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; <sup>5</sup>[and]

1. Ins. by the Constitution (Seventy-seventh Amendment) Act, 1995, sec. 2 (w.e.f. 17-6-1995).

2. Subs. by the Constitution (Eighty-fifth Amendment) Act, 2001, sec. 2, for “in matters of promotion to any class” (w.e.f. 17-6-1995).

3. Ins. by the Constitution (Eighty-first Amendment) Act, 2000, sec. 2 (w.e.f. 9-6-2000).

4. Ins. by the Constitution (Ninety-seventh Amendment) Act, 2011, sec. 2 (w.e.f. 15-2-2012).

5. Ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2(a)(i) (w.e.f. 20-6-1979).

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<sup>1</sup>[\*\*\*]

(g) to practise any profession, or to carry on any occupation, trade or business.

<sup>2</sup>[(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of <sup>3</sup>[the sovereignty and integrity of India;] the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.]

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of <sup>4</sup>[the sovereignty and integrity of India or] public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of <sup>4</sup>[the sovereignty and integrity of India or] public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in <sup>5</sup>[sub-clauses (d) and (e)] of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, <sup>6</sup>[nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

#### COMMENTS

A company cannot maintain a petition under article 32 for enforcement of fundamental rights guaranteed under article 19. Company not being a citizen has no fundamental rights; *Shree Sidhballi Steels Ltd. v. State of Uttar Pradesh*, AIR 2011 SC 1175: (2011) 3 SCC 193: (2011) 1 SCALE 676.

#### COMMENTS

#### Freedom of speech – Restriction

Duty of media to provide correct information. It is the responsibility of the media to ensure that they are not providing the public with information that is factually wrong biased on simply unverified information. The right to freedom of speech is enshrined in article 19(1)(a) of the Constitution. However, this right is restricted by article 19(2) in the

1. Sub-clause (f) omitted by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2(a)(ii) (w.e.f. 20-6-1979).
2. Subs. by the Constitution (First Amendment) Act, 1951, sec. 3(a), for clause (2) (with retrospective effect).
3. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 2(a) (w.e.f. 5-10-1963).
4. Ins. by the Constitution (Sixteenth Amendment) Act, 1963, sec. 2(b) (w.e.f. 5-10-1963).
5. Subs. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 2(b), for "sub-clauses (d), (e) and (f)" (w.e.f. 20-6-1979).
6. Subs. by the Constitution (First Amendment) Act, 1951, sec. 3(b), for certain words (w.e.f. 18-6-1951).

interest of the sovereignty and integrity of India, security of the State, Public order, decency and morality and also Contempt of Courts Act and defamation; *Sanjay Narayan, Editor-in-Chief Hindustan v. Hon. High Court of Allahabad*, JT 2011 (10) SC 74: (2011) 9 SCALE 532.

#### Scope

This vires of any subordinate legislation can be challenged on the ground that it is arbitrary, unreasonable and offends article 14 of the Constitution; *Sudhir Kumar Consul v. Allahabad Bank*, (2011) (3) SCC 486: JT 2011 (2) SC 418: 2011 (2) LLJ 199: 2011 (2) SLT 312.

**20. Protection in respect of conviction for offences.—**(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

#### COMMENTS

(i) Right against self-incrimination under article 20(3) does not exclude any voluntary statements made in exercise of free will and volition; *Mohammed Ajmal Mohammad Anir Kasab v. State of Maharashtra*, 2012 AIR (SC) 3565: 2012 (9) SCC 1: 2012 (8) JT 4: 2012 (7) SCALE 553.

(ii) Protection under article 20(3) does not extend to any kind of evidence but only to self-incriminating statements relating to the charges brought against an accused. In order to bring the testimony of an accused within the prohibition of constitutional protection, it must be of such character that by itself it tends to incriminate the accused. For invoking the constitutional rights under article 20(3) a formal accusation against the person claiming the protection must exist; *Balasaheb v. State of Maharashtra*, AIR 2011 SC 304: (2011) 1 SCC 364: JT 2010 (13) SC 744: (2010) 13 SCALE 180.

(iii) It is trite law that the sentence impossible on the date of commission of the offence has to determine the sentence impossible on completion of trial. This proposition is clear even on a bare reading of article 20(1). Under article 20(1) what is prohibited is the conviction and sentence in criminal proceedings under *ex post facto* law; *Ravinder Singh v. State of Himachal Pradesh*, AIR 2010 SC 199.

**21. Protection of life and personal liberty.—**No person shall be deprived of his life or personal liberty except according to procedure established by law.

#### COMMENTS

(i) When the undertrial prisoners are detained in jail custody to an indefinite period, article 21 of the Constitution is violated; *Dipak Shubashchandra Melita v. Central Bureau of Investigation*, 2012 AIR (SC) 949: 2012 (4) SCC 134: 2012 (2) JT 439: 2012 (2) SCALE 401.

(ii) Right to privacy is an integral part of life. This is a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner; *Ram Jethmalani v. Union of India*, (2011) 8 SCC 1: JT 2011 (7) SC 104: (2011) 6 SCALE 691.

(iii) Right to life is one of the basic human right and not even the State has the authority to violate that right; *Siddharani Satlingappa Mhetre v. State of Maharashtra*, JT 2010 (13) SC 247: (2010) 12 SCALE 691.

(iv) The woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under article 21. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproduction choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a 'compelling State interest' in protecting the life of the prospective child; *Suchita Srivastava v. Chandigarh Administration*, AIR 2010 SC 235.

(2) Nothing in sub-clause (a) of clause (1) shall affect the power conferred by law on any officer of the Armed Forces of the Union to suspend, remit or commute a sentence passed by a Court martial.

(3) Nothing in sub-clause (c) of clause (1) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor <sup>[\*\*\*]</sup> of a State under any law for the time being in force.

#### COMMENTS

(i) While examining challenge to the decision taken by the President under article 72 of the Constitution on mercy petition, the Courts power of judicial review is very limited. The Court can neither sit in appeal nor exercise the power of review, but can interfere if it is found that the decision has been taken without application of mind to the relevant factors or the same is founded on extraneous or irrelevant considerations or is vitiated due to *mala fide* or patent arbitrariness; *Devender Pal Singh Bhullar v. State of N.C.T. of Delhi*, AIR 2013 SC 1975.

(ii) The power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of article 72 and article 161 of the Constitution. This responsibility was cast upon the Executive through a constitutional mandate to ensure that some public purpose may require fulfilment by grant of remission in appropriate cases. This power was never intended to be used or utilized by the Executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate; *State of Haryana v. Jagdish*, AIR 2010 SC 1690.

73. Extent of executive power of the Union.—(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

- (a) to the matters with respect to which Parliament has power to make laws; and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State <sup>2</sup>[\*\*\*] to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

#### Council of Ministers

74. Council of Ministers to aid and advise President.—<sup>3</sup>[(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice:]

1. The words "or Rajpramukh" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).
2. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).
3. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 13, for clause (1) (w.e.f. 3-1-1977).

*Explanation.*—In this article, the expressions “Ruler” and “Indian State” have the same meanings as in article 363.

<sup>1</sup>[297. Things of value within territorial waters or continental shelf and resources of the exclusive economic zone to vest in the Union.—(1) All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union.

(2) All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union.

(3) The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament.]

<sup>2</sup>[298. Power to carry on trade, etc.—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:

Provided that—

- (a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and
- (b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.]

299. Contracts.—(1) All contracts made in the exercise of the executive power of the Union or of a State shall be expressed to be made by the President, or by the Governor <sup>3</sup>[\*\*\*] of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor <sup>3</sup>[\*\*\*] by such persons and in such manner as he may direct or authorise.

(2) Neither the President nor the Governor <sup>4</sup>[\*\*\*] shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

1. Subs. by the Constitution (Fortieth Amendment) Act, 1976, sec. 2, for article 297 (w.e.f. 27-5-1976). Earlier article 297 was amended by the Constitution (Fifteenth Amendment) Act, 1963, sec. 9 (w.e.f. 5-10-1963).

2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 20, for article 298 (w.e.f. 1-11-1956).

3. The words “or the Rajpramukh” omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).

4. The words “nor the Rajpramukh” omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).



300. Suits and proceedings.—(1) The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.

(2) If at the commencement of this Constitution—

- (a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and
- (b) any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

#### <sup>1</sup>[CHAPTER IV

#### RIGHT TO PROPERTY

300A. Persons not to be deprived of property save by authority of law.—No person shall be deprived of his property save by authority of law.]

#### COMMENTS

(i) The right to property is now considered to be not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the constitution or a fundamental right, human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension; *Tukaram Kanna Joshi v. M.I.D.C.*, AIR 2013 SC 565.

(ii) Right not to be deprived of property save by authority of law is no longer a fundamental right, though it is still a constitutional right; *Bishamber v. State of Uttar Pradesh*, AIR 1982 SC 33.

#### Expression "Property"

The expression "Property" in article 300A is not confined to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law; *K.T. Plantation Pvt. Ltd. v. State of Kerala*, AIR 2011 SC 3430: (2011) 9 SCC 1: JT 2011 (9) SC 65: (2011) 8 SCALE 583.

#### PART XIII

#### TRADE, COMMERCE AND INTERCOURSE WITHIN THE TERRITORY OF INDIA

301. Freedom of trade, commerce and intercourse.—Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

302. Power of Parliament to impose restrictions on trade, commerce and intercourse.—Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

303. Restrictions on the legislative powers of the Union and of the States with regard to trade and commerce.—(1) Notwithstanding anything in article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

1. Chapter IV (containing article 300A) ins. by the Constitution (Forty-fourth Amendment) Act, 1978, sec. 34 (w.e.f. 20-6-1979).

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of article 368.

#### SEVENTH SCHEDULE

(Article 246)

#### LIST I—UNION LIST

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination of effective demobilisation.

2. Naval, military and air forces; any other armed forces of the Union.

[2A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment.]

3. Delimitation of cantonment areas, local self-government in such areas, the constitution and powers within such areas of cantonment authorities and the regulation of house accommodation (including the control of rents) in such areas.

4. Naval, military and air force works.

5. Arms, firearms, ammunition and explosives.

6. Atomic energy and mineral resources necessary for its production.

7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

8. Central Bureau of Intelligence and Investigation.

9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention.

10. Foreign affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into, and emigration and expulsion from, India; passports and visas.

20. Pilgrimages to places outside India.

21. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.

22. Railways.

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1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(a) (w.e.f. 3-1-1977).

23. Highways declared by or under law made by Parliament to be national highways.

24. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways.

25. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

26. Lighthouses, including lightships, beacons and other provisions for the safety of shipping and aircraft.

27. Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation and the constitution and powers of port authorities therein.

28. Port quarantine, including hospitals connected therewith; seamen's and marine hospitals.

29. Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

30. Carriage of passengers and goods by railway, sea or air, or by national waterways in mechanically propelled vessels.

31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

32. Property of the Union and the revenue therefrom, but as regards property situated in a State <sup>1</sup>[\*\*\*] subject to legislation by the State, save in so far as Parliament by law otherwise provides.

<sup>2</sup>[\*\*\*]

34. Courts of wards for the estates of Rulers of Indian States.

35. Public debt of the Union.

36. Currency, coinage and legal tender; foreign exchange.

37. Foreign loans.

38. Reserve Bank of India.

39. Post Office Savings Bank.

40. Lotteries organised by the Government of India or the Government of a State.

41. Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.

42. Inter-State trade and commerce.

43. Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including co-operative societies.

44. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one State, but not including universities.

1. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch. (w.e.f. 1-11-1956).

2. Entry 33 omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 26 (w.e.f. 1-11-1956).

45. Banking.
46. Bills of exchange, cheques, promissory notes and other like instruments.
47. Insurance.
48. Stock exchanges and futures markets.
49. Patents, inventions and designs; copyright; trade-marks and merchandise marks.
50. Establishment of standards of weight and measure.
51. Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.
54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
55. Regulation of labour and safety in mines and oilfields.
56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.
57. Fishing and fisheries beyond territorial waters.
58. Manufacture, supply and distribution of salt by Union agencies, regulation and control of manufacture, supply and distribution of salt by other agencies.
59. Cultivation, manufacture, and sale for export, of opium.
60. Sanctioning of cinematograph films for exhibition.
61. Industrial disputes concerning Union employees.
62. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and the Indian War Memorial, and any other like institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.
63. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University and the [Delhi University; the University established in pursuance of article 371E;] any other institution declared by Parliament by law to be an institution of national importance.
64. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
65. Union agencies and institutions for—
  - (a) professional, vocational or technical training, including the training of police officers; or
  - (b) the promotion of special studies or research; or
  - (c) scientific or technical assistance in the investigation or detection of crime.

1. Subs. by the Constitution (Thirty-second Amendment) Act, 1973, sec. 4, for "Delhi University and" (w.e.f. 1-7-1974).

66. Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

67. Ancient and historical monuments and records, and archaeological sites and remains, <sup>1</sup>[declared by or under law made by Parliament] to be of national importance.

68. The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.

69. Census.

70. Union Public Services; All-India Services; Union Public Service Commission.

71. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.

72. Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission.

73. Salaries and allowances of members of Parliament, the Chairman and Deputy Chairman of the Council of States and the Speaker and Deputy Speaker of the House of the People.

74. Powers, privileges and immunities of each House of Parliament and of the members and the Committees of each House; enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament or commissions appointed by Parliament.

75. Emoluments, allowances, privileges, and rights in respect of leave of absence, of the President and Governors; salaries and allowances of the Ministers for the Union; the salaries, allowances, and rights in respect of leave of absence and other conditions of service of the Comptroller and Auditor-General.

76. Audit of the accounts of the Union and of the States.

77. Constitution, organisation, jurisdiction and powers of the Supreme Court (including contempt of such Court), and the fees taken therein; persons entitled to practise before the Supreme Court.

78. Constitution and organisation <sup>2</sup>[(including vacations)] of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts.

<sup>3</sup>[79. Extension of the jurisdiction of a High Court to, and exclusion of the jurisdiction of a High Court from, any Union territory.]

80. Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Government of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

81. Inter-State migration; inter-State quarantine.

82. Taxes on income other than agricultural income.

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1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 27, for "declared by Parliament by law" (w.e.f. 1-11-1956).
  2. Ins. by the Constitution (Fifteenth Amendment) Act, 1963, sec. 12 (with retrospective effect).
  3. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 29 and Sch., for entry 79 (w.e.f. 1-11-1956).

83. Duties of customs including export duties.

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption.

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

85. Corporation tax.

86. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

87. Estate duty in respect of property other than agricultural land.

88. Duties in respect of succession to property other than agricultural land.

89. Terminal taxes on goods or passengers, carried by railway, sea or air; taxes on railway fares and freights.

90. Taxes other than stamp duties on transactions in stock exchanges and futures markets.

91. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

<sup>1</sup>[92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.]

<sup>2</sup>[92B. Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.]

<sup>\*</sup>[92C. Taxes on services.]

93. Offences against laws with respect to any of the matters in this List.

94. Inquiries, surveys and statistics for the purpose of any of the matters in this List.

95. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List; admiralty jurisdiction.

96. Fees in respect of any of the matters in this List, but not including fees taken in any court.

97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

#### LIST II—STATE LIST

1. Public order (but not including <sup>3</sup>[the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof] in aid of the civil power).

1. Ins. by the Constitution (Sixth Amendment) Act, 1956, sec. 2(a) (w.e.f. 11-9-1956).

2. Ins. by the Constitution (Forty-sixth Amendment) Act, 1982, sec. 5 (w.e.f. 2-2-1983).

<sup>\*</sup> Ins. by the Constitution (Eighty-eighth Amendment) Act, 2003, sec 4 (which is yet not in force, date to be notified later on).

3. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(b)(i), for certain words (w.e.f. 3-1-1977).

<sup>1</sup>[2. Police (including railway and village police) subject to the provisions of entry 2A of List I.]

3. <sup>2</sup>[\*\*\*] Officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6. Public health and sanitation; hospitals and dispensaries.

7. Pilgrimages, other than pilgrimages to places outside India.

8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors.

9. Relief of the disabled and unemployable.

10. Burials and burial grounds; cremations and cremation grounds.

<sup>3</sup>[\*\*\*]

12. Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those '[declared by or under law made by Parliament] to be of national importance.

13. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

15. Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

16. Pounds and the prevention of cattle trespass.

17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

<sup>5</sup>[\*\*\*]

1. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(b)(ii), for entry 2 (w.e.f. 3-1-1977).

2. Certain words omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(b)(iii) (w.e.f. 3-1-1977).

3. Entry 11 omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(b)(iv) (w.e.f. 3-1-1977).

4. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 27, for "declared by Parliament by law" (w.e.f. 1-11-1956).

5. Entries 19 and 20 omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(b)(iv) (w.e.f. 3-1-1977).

21. Fisheries.
22. Courts of wards subject to the provisions of entry 34 of List I; encumbered and attached estates.
23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.
24. Industries subject to the provisions of [entries 7 and 52] of List I.
25. Gas and gas-works.
26. Trade and commerce within the State subject to the provisions of entry 33 of List III.
27. Production, supply and distribution of goods subject to the provisions of entry 33 of List III.
28. Markets and fairs.
29. [\*\*\*]
30. Money-lending and money-lenders; relief of agricultural indebtedness.
31. Inns and inn-keepers.
32. Incorporation, regulation and winding up of corporation, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
33. Theaters and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.
34. Betting and gambling.
35. Works, lands and buildings vested in or in the possession of the State.
36. [\*\*\*]
37. Elections to the Legislature of the State subject to the provisions of any law made by Parliament.
38. Salaries and allowances of members of the Legislature of the State, of the Speaker and Deputy Speaker of the Legislative Assembly and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof.
39. Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof, and, if there is a Legislative Council, of that Council and of the members and the committees thereof; enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.
40. Salaries and allowances of Ministers for the State.
41. State public services; State Public Service Commission.
42. State pensions, that is to say, pensions payable by the State or out of the Consolidated Fund of the State.
43. Public debt of the State.
44. Treasure trove.

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1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 28, for "entry 52" (w.e.f. 1-11-1956).
  2. Entry 29 omitted by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(b)(iv) (w.e.f. 3-1-1977).
  3. Entry 36 omitted by the Constitution (Seventh Amendment) Act, 1956, sec. 26 (w.e.f. 1-11-1956).



45. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

46. Taxes on agricultural income.

47. Duties in respect of succession to agricultural land.

48. Estate duty in respect of agricultural land.

49. Taxes on lands and buildings.

50. Taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development.

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

53. Taxes on the consumption or sale of electricity.

<sup>1</sup>[54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.]

55. Taxes on advertisements other than advertisements published in the newspapers <sup>2</sup>[and advertisements broadcast by radio or television].

56. Taxes on goods and passengers carried by road or on inland waterways.

57. Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tramcars subject to the provisions of entry 35 of List III.

58. Taxes on animals and boats.

59. Tolls.

60. Taxes on professions, trades, callings and employments.

61. Capitation taxes.

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

64. Offences against laws with respect to any of the matters in this List.

65. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

1. Subs. by the Constitution (Sixth Amendment) Act, 1956, sec. 2(b), for entry 54 (w.e.f. 11-9-1956).

2. Ins. by the Constitution (Forty-Second Amendment) Act, 1976, sec. 57(b)(v) (w.e.f. 3-1-1977).

**LIST III—CONCURRENT LIST**

1. Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.

2. Criminal procedure, including all matters included in the Code of Criminal Procedure at the commencement of this Constitution.

3. Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention.

4. Removal from one State to another State of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this List.

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

6. Transfer of property other than agricultural land; registration of deeds and documents.

7. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

8. Actionable wrongs.

9. Bankruptcy and insolvency.

10. Trust and Trustees.

11. Administrators-general and official trustees.

<sup>1</sup>[11A. Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.]

12. Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.

13. Civil procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.

14. Contempt of court, but not including contempt of the Supreme Court.

15. Vagrancy; nomadic and migratory tribes.

16. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.

17. Prevention of cruelty to animals.

<sup>2</sup>[17A. Forests.]

<sup>2</sup>[17B. Protection of wild animals and birds.]

18. Adulteration of foodstuffs and other goods.

19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium.

20. Economic and social planning.

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(c)(i) (w.e.f. 3-1-1977).

2. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(c)(ii) (w.e.f. 3-1-1977).

<sup>1</sup>[20A. Population control and family planning.]

21. Commercial and industrial monopolies, combines and trusts.

22. Trade unions; industrial and labour disputes.

23. Social security and social insurance; employment and unemployment.

24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.

<sup>2</sup>[25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.]

26. Legal, medical and other professions.

27. Relief and rehabilitation of persons displaced from their original place of residence by reason of the setting up of the Dominions of India and Pakistan.

28. Charities and charitable institutions, charitable and religious endowments and religious institutions.

29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.

30. Vital statistics including registration of births and deaths.

31. Ports other than those declared by or under law made by Parliament or existing law to be major ports.

32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.

<sup>3</sup>[33. Trade and commerce in, and the production, supply and distribution of,—

(a) the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) foodstuffs, including edible oilseeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned, and cotton seed; and

(e) raw jute.]

<sup>4</sup>[33A. Weights and measures except establishment of standards.]

34. Price control.

35. Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

36. Factories.

37. Boilers.

38. Electricity.

1. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(c)(iii) (w.e.f. 3-1-1977).

2. Subs. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(c)(iv), for entry 25 (w.e.f. 3-1-1977).

3. Subs. by the Constitution (Third Amendment) Act, 1954, sec. 2, for entry 33 (w.e.f. 22-2-1955).

4. Ins. by the Constitution (Forty-second Amendment) Act, 1976, sec. 57(c)(v) (w.e.f. 3-1-1977).

39. Newspapers, books and printing presses.
40. Archaeological sites and remains other than those '[declared by or under law made by Parliament] to be of national importance.
41. Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
- <sup>2</sup>[42. Acquisition and requisitioning of property.]
43. Recovery in a State of claims in respect of taxes and other public demands, including arrears of land-revenue and sums recoverable as such arrears, arising outside that State.
44. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III.
46. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
47. Fees in respect of any of the matters in this List, but not including fees taken in any court.

**EIGHTH SCHEDULE**  
[Articles 344(1) and 351]  
**LANGUAGES**

1. Assamese.
2. Bengali.
- <sup>3</sup>[3. Bodo.]
- <sup>4</sup>[4. Dogri.]
- \*5. Gujarati.
- \*6. Hindi.
- \*7. Kannada.
- \*8. Kashmiri.
- <sup>6</sup>[\*9. Konkani.]
- <sup>5</sup>[\*10. Mathili.]
- \*11. Malayalam.
- <sup>6</sup>[\*12. Manipuri.]
- \*13. Marathi.
- <sup>7</sup>[\*14. Nepali.]

1. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 27, for "declared by the Parliament by law" (w.e.f. 1-11-1956).
2. Subs. by the Constitution (Seventh Amendment) Act, 1956, sec. 26, for entry 42 (w.e.f. 1-11-1956).
3. Ins. by the Constitution (Ninety-second Amendment) Act, 2003, sec. 2(a) (w.e.f. 7-1-2004).
4. Ins. by the Constitution (Seventy-first Amendment) Act, 1992, sec. 2(a) (w.e.f. 31-8-1992).
5. Ins. by the Constitution (Ninety-second Amendment) Act, 2003, sec. 2(c) (w.e.f. 7-1-2004).
6. Ins. by the Constitution (Seventy-first Amendment) Act, 1992, sec. 2(b) (w.e.f. 31-8-1992).
7. Ins. by the Constitution (Seventy-first Amendment) Act, 1992, sec. 2(c) (w.e.f. 31-8-1992).

# The Citizenship Act, 1955

(57 of 1955)

*with*

- The Citizenship Rules, 2009 *as amended by (Amendment) Rules, 2013*
- The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003

*along with*

**SHORT NOTES**

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(2) Subject to the provisions of section 15 the decision of the prescribed authority or the Central Government on any such application as aforesaid shall be final and shall not be called in question in any court.

<sup>1</sup>[14A. Issue of national identity cards.—(1) The Central Government may compulsorily register every citizen of India and issue national identity card to him.

(2) The Central Government may maintain a National Register of Indian Citizens and for that purpose establish a National Registration Authority.

(3) On and from the date of commencement of the Citizenship (Amendment) Act, 2003, the Registrar General, India, appointed under sub-section (1) of section 3 of the Registration of Births and Deaths Act, 1969 (18 of 1969) shall act as the National Registration Authority and he shall function as the Registrar General of Citizen Registration.

(4) The Central Government may appoint such other officers and staff as may be required to assist the Registrar General of Citizen Registration in discharging his functions and responsibilities.

(5) The procedure to be followed in compulsory registration of the citizens of India shall be such as may be prescribed.]

15. Revision.—(1) Any person aggrieved by an order made under this Act by the prescribed authority or any officer or other authority (other than the Central Government) may, within a period of thirty days from the date of the order, make an application to the Central Government for revision of that order:

Provided that the Central Government may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) On receipt of any such application under sub-section (1), the Central Government shall, after considering the application of the aggrieved person and any report thereon which the officer or authority making the order may submit, make such order in relation to the application as it deems fit, and the decision of the Central Government shall be final.

<sup>2</sup>[15A. Review.—(1) Any person aggrieved by an order made by the Central Government, may within thirty days from the date of such order, make an application for review of such order:

Provided that the Central Government may entertain application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time:

Provided further that an application for a review of an order passed in terms of the provisions of section 14A shall be disposed of in the manner provided for in the procedure as may be laid down under clause (ia) of sub-section (2) of section 18.

(2) On receipt of an application under sub-section (1), the Central Government shall, make such order as it deems fit, and the decision of the Central Government on such review shall be final.]

1. Ins. by Act 6 of 2004, sec. 12 (w.e.f. 3-12-2004).

2. Ins. by Act 6 of 2004, sec. 13 (w.e.f. 3-12-2004).

16. Delegation of power.—The Central Government may, by order, direct that any power which is conferred on it by any of the provisions of this Act other than those of section 10 and section 18 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be so specified.

17. Offences.—Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with imprisonment for a term which may extend to <sup>1</sup>[five years], or <sup>2</sup>[with fine which may extend to fifty thousand rupees], or with both.

18. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

- (a) the registration of anything required or authorized under this Act to be registered, and the conditions and restrictions in regard to such registration;
- <sup>3</sup>[(aa) the form and manner in which a declaration under sub-section (1) of section 4 shall be made;]
- (b) the forms to be used and the registers to be maintained under this Act;
- (c) the administration and taking of oaths of allegiance under this Act and the time within which, and the manner in which, such oaths shall be taken and recorded;
- (d) the giving of any notice required or authorized to be given by any person under this Act;
- (e) the cancellation of the registration of, and the cancellation and amendment of certificate of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;
- <sup>4</sup>[(ee) the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (b) of section 6A shall be submitted and other matters connected with such declarations;]
- (f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;
- (g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of an oath of allegiance, and in respect of the supply of certified or other copies of documents;

1. Subs. by Act 6 of 2004, sec. 14, for "six months" (w.e.f. 3-12-2004).

2. Subs. by Act 6 of 2004, sec. 14, for "with fine" (w.e.f. 3-12-2004).

3. Ins. by Act 6 of 2004, sec. 15 (w.e.f. 3-12-2004).

4. Ins. by Act 65 of 1985, sec. 3 (w.e.f. 7-12-1985).

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- (h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;
- (i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil court;
- <sup>1</sup>[(ia) the procedure to be followed in compulsory registration of the citizens of India under sub-section (5) of section 14A;]
- (j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and
- (k) any other matter which is to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that breach thereof shall be punishable with fine which may extend to one thousand rupees:

<sup>2</sup>[Provided that any rule made in respect of a matter specified in clause (ia) of sub-section (2) may provide that a breach thereof shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five thousand rupees, or with both.]

<sup>3</sup>[(4) Every rule made under this section shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

**19. Repeals.**—[Rep. by the Repealing and Amending Act, 1960 (Act 58 of 1960), sec. 2 and the First Schedule (w.e.f. 26-12-1960).]

<sup>4</sup>[\*\*\*]

## <sup>5</sup>[THE SECOND SCHEDULE

[See sections 5(2) and 6(2)]

### OATH OF ALLEGIANCE

I, A/B.....do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, and that I will faithfully observe the laws of India and fulfil my duties as a citizen of India.]

1. Ins. by Act 65 of 1985, sec. 3 (w.e.f. 7-12-1985).
2. Ins. by Act 6 of 2004, sec. 15 (w.e.f. 3-12-2004).
3. Subs. by Act 4 of 1986, sec. 2 and Sch., for sub-section (4) (w.e.f. 15-5-1986).
4. The First Schedule omitted by Act 6 of 2004, sec. 16 (w.e.f. 3-12-2004). Earlier the First Schedule was amended by Act 65 of 1957, sec. 2 (w.e.f. 27-12-1957).
5. Subs. by Act 6 of 2004, sec. 17, for The Second Schedule (w.e.f. 3-12-2004).



## THE CITIZENSHIP (REGISTRATION OF CITIZENS AND ISSUE OF NATIONAL IDENTITY CARDS) RULES, 2003<sup>1</sup>

*In exercise of the powers conferred by sub-sections (1) and (3) of section 18 of the Citizenship Act, 1955 (57 of 1955), the Central Government hereby makes the following rules, namely:—*

**1. Short title and commencement.**—(1) These rules may be called the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.

(2) They shall come into force on the date<sup>2</sup> of their publication in the Official Gazette.

**2. Definitions.**—In these rules, unless the context otherwise requires,—

- (a) "Act" means the Citizenship Act, 1955 (57 of 1955);
- (b) "Chief Registrar of Births and Deaths" means the Chief Registrar of Births and Deaths appointed under the Registration of Births and Deaths Act, 1969 (18 of 1969);
- (c) "citizen" means the citizen of India in terms of the Constitution of India and provisions of the Act;
- (d) "Director of Citizen Registration" means the Director of Census in a State or Union territory appointed by the Central Government under the Census Act, 1948 (37 of 1948), who shall also function as the Director of Citizen Registration in that State, or as the case may be, in the Union territory;
- (e) "District Register of Indian Citizens" means the register containing details of Indian citizens usually residing in the district;
- (f) "District Registrar of Citizen Registration" means the District Magistrate of every revenue district, by whatever name known, who shall act as the District Registrar of Citizen Registration;
- (g) "Local Register of Indian Citizens" means the register containing details of Indian citizens usually residing in a village or rural area or town or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) within a ward in a town or urban area;
- (h) "Local Registrar of Citizen Registration" means a local officer, or a revenue officer, appointed by the State Government at the lowest geographical jurisdiction, that is to say, of a village or rural area or town, or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) within a ward in a town or urban area, who shall function as Local Registrar for the purpose of preparation of Local Register of Indian Citizens;
- (i) "National Identity Card" means the identity card issued under rule 13;
- (j) "National Identity Number" means a unique identity number allotted to every Indian Citizen by the Registrar General of Citizen Registration, India;
- (k) "National Register of Indian Citizens" means the register containing details of Indian Citizens living in India and outside India;

1. *Vide* G.S.R. 937 (E), dated 10th December, 2003, published in the Gazette of India, Extra., Pt. II, Sec. 3 (ii), dated 10th December, 2003.

2. Came into force on 10-12-2003.

- (l) "Population Register" means the register containing details of persons usually residing in a village or rural area or town or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) within a ward in a town or urban area;
- (m) "Registrar General of Citizen Registration" means the Registrar General, India, appointed under the Registration of Births and Deaths Act, 1969 (18 of 1969), who shall also function as the Registrar General of Citizen Registration, India;
- [(ma) "Schedule" means a Schedule appended to these rules;]
- (n) "State Register of Indian Citizens" means the register containing details of Indian citizens usually residing in the State;
- (o) "Sub-district or Taluk Registrar of Citizen Registration" means the Subdistrict Magistrate or Taluk Executive Magistrate of every sub-district or taluk, by whatever name known, as the case may be, who shall function as Sub-district or Taluk Registrar of Citizen Registration;
- (p) "Sub-district Register of Indian Citizens" means the register containing details of Indian citizens usually residing in a taluk, or by whatever name known, of the sub-district.

3. National Register of Indian Citizens.—(1) The Registrar General of Citizen Registration shall establish and maintain the National Register of Indian Citizens.

(2) The National Register of Indian Citizens shall be divided into sub-parts consisting of the State Register of Indian Citizens, the District Register of Indian Citizens, the Sub-district Register of Indian Citizens and the Local Register of Indian Citizens and shall contain such details as the Central Government may, by order, in consultation with the Registrar General of Citizen Registration, specify.

(3) The National Register of Indian Citizens shall contain the following particulars in respect of every Citizen, namely:—

- (i) Name;
- (ii) Father's name;
- (iii) Mother's name;
- (iv) Sex;
- (v) Date of birth;
- (vi) Place of birth;
- (vii) Residential address (present and permanent);
- (viii) Marital status—if ever married, name of the spouse;
- (ix) Visible identification mark;
- (x) Date of registration of Citizen;
- (xi) Serial number of registration; and
- (xii) National Identity Number.

1. Ins. by G.S.R. 803(E), dated 9th November, 2009 (w.e.f. 9-11-2009).

Rule 4] *The Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003*

(4) The Central Government may, by an order issued in this regard, decide a date by which the Population Register shall be prepared by collecting information relating to all persons who are usually residing within the jurisdiction of Local Registrar.

(5) The Local Register of Indian citizens shall contain details of persons after due verification made from the Population Register.

**4. Preparation of the National Register of Indian Citizens.—**(1) The Central Government shall, for the purpose of National Register of Indian Citizens, cause to carry throughout the country a house-to-house enumeration for collection of specified particulars relating to each family and individual, residing in a local area including the Citizenship status.

(2) The Registrar General of Citizen Registration shall notify the period and duration of the enumeration in the Official Gazette.

(3) For the purposes of preparation and inclusion in the Local Register of Indian Citizens, the particulars collected of every family and individual in the Population Register shall be verified and scrutinized by the Local Registrar, who may be assisted by one or more persons as specified by the Registrar General of Citizen Registration.

(4) During the verification process, particulars of such individuals, whose Citizenship is doubtful, shall be entered by the Local Registrar with appropriate remark in the Population Register for further enquiry and in case of doubtful Citizenship, the individual or the family shall be informed in a specified proforma immediately after the verification process is over.

(5) (a) Every person or family specified in sub-rule (4), shall be given an opportunity of being heard by the Sub-district or Taluk Registrar of Citizen Registration, before a final decision is taken to include or to exclude their particulars in the National Register of Indian Citizens.

(b) The Sub-district or Taluk Registrar shall finalize his findings within a period of ninety days of the entry being made, or within such reasonable extended time for which he shall record the reasons in writing.

(6) (a) The draft of the Local Register of Indian Citizens shall be published by the Sub-district or Taluk Registrar, for inviting any objections or for inclusion of any name or corrections for the family or individual particulars collected and proposed to be finally entered in the National Register of Indian Citizens.

(b) Any objection against a particular entry or for inclusion of a name, or corrections if any, in the Local Register of Indian Citizens may be made within a period of thirty days from the date of publication of the draft of the Local Register of Indian Citizens, spelling out the nature and reasons for the objection in such form as may be specified by the Registrar General of Citizen Registration.

(c) Subject to the provisions contained in clause (a) of sub-rule (5), the Sub-district or Taluk Registrar shall consider such objections and summarily dispose off the same within a period of ninety days, and thereafter submit the Local Register of Indian Citizens so prepared to the District Registrar of Citizen Registration who shall cause the entries in the Local Register of Indian Citizens, to be transferred to the National Register of Indian Citizens.

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(7) (a) Any person aggrieved by the order of the Sub-district or Taluk Registrar under sub-rule (5) or sub-rule (6), may prefer an appeal within thirty days from the date of such order, to the District Registrar of Citizen Registration.

(b) The District Registrar of Citizen Registration shall take a final decision, after giving an opportunity of being heard to the person so aggrieved, within a period of ninety days from the date of appeal.

(c) In case the appeal is allowed, the particulars shall be entered in the National Register of Indian Citizens.

<sup>1</sup>[4A. Special provisions as to National Register of Indian Citizens in State of Assam.—(1) Nothing in rule 4 shall, on and after the commencement of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Amendment Rules, 2009, apply to the State of Assam.

(2) The Central Government shall, for the purpose, of the National Register of Indian Citizens in the State of Assam, cause to carry out throughout the State of Assam for preparation of the National Register of Indian Citizens in the State of Assam by inviting applications from all the residents, for collection of specified particulars relating to each family and individual, residing in a local area in the State including the citizenship status based on the National Register of Citizens 1951 and the <sup>2</sup>[electoral rolls upto the midnight of the 24th day of March, 1971].

(3) The Registrar General of Citizens Registration shall notify the period and duration of the enumeration in the Official Gazette.

(4) The manner of preparation of the National Register of Indian Citizens in the State of Assam shall be such as specified in the Schedule appended to these rules.]

5. Officials of the Central Government, State Governments and local bodies to assist the Registrar General of Citizen Registration.—Every official of the Central Government, State Government, local bodies or their undertakings shall assist the Registrar General of Citizen Registration or any person authorized by him in this behalf, in preparation of the database relating to each family and every person, and in implementing the provisions of these rules.

6. Initialization of National Register of Indian Citizens.—(1) The Registrar General of Citizen Registration shall, by order, notify the date on which the National Register of Indian Citizens shall be initialized throughout the country.

(2) The order made under sub-rule (1) may provide for the initialization period specified by the Registrar General of Citizen Registration for establishment of the National Register of Indian Citizens.

(3) Every individual must get himself registered with the Local Registrar of Citizen Registration during the period of initialization as specified under sub-rule (2).

7. Head of family and individual to act as informant.—(1) It shall be compulsory for every citizen of India to assist the officials responsible for preparation of the National Register of Indian Citizens under rule 4 and get himself registered in the Local Register of Indian Citizens during the period of initialization.

1. Ins. by G.S.R. 803(E), dated 9th November, 2009 (w.e.f. 9-11-2009).

2. Subs. by G.S.R. 207(E), dated 23rd March, 2010, for "electoral rolls prior to the year 1971" (w.e.f. 23-3-2010).

(2) It shall be the responsibility of the head of every family, during the period specified for preparation of the Population Register, to give the correct details of name and number of members and other particulars, as specified in sub-rule (3) of rule 3, of the family of which he is the head.

(3) It shall be the responsibility of every Citizen to register once with the Local Registrar of Citizen Registration and to provide correct individual particulars to that authority.

(4) In the case of dependents, such as minor who has not attained the age of eighteen years, or who is disabled, the responsibility of reporting the particulars under this rule shall be of the head of the family:

Provided that in so far as inmates of institutions, such as orphanages, old age homes, mental asylums are concerned, the responsibility for providing the requisite details shall lie with the head of the Institution.

8. Power of District Registrar, Sub-district or Taluk Registrar or Local Registrar of Citizen Registration to obtain information.—The District Registrar, Sub-district or Taluk Registrar or the Local Registrar of Citizen Registration may, by order, require any person to furnish any information within his knowledge in connection with the determination of Citizenship status of any person and the person required to furnish information shall be bound to comply with such requisition.

9. Procedure as to making of entries in National Register of Indian Citizens.—The Registrar General of Citizen Registration may, by order, specify the procedure to be followed in preparation of the National Register of Indian Citizens and disposal of claims and objections with regard to family and individual particulars proposed to be entered in that Register.

10. Deletion of name and particulars from National Register of Indian Citizens.—(1) The name and particulars of a Citizen may be removed from the National Register of Indian Citizens by an order of the Registrar General of Citizen Registration or any officer authorized by him in this behalf in the event of—

- (i) death of the person; or
- (ii) the person ceasing to be an Indian citizen under section 8 of the Act; or
- (iii) revocation of Indian citizenship under section 9 of the Act; or
- (iv) the particulars provided by the individual or the family found to be incorrect subsequently, thereby affecting the Citizenship status of the person.

(2) It shall be the duty of the Indian Citizen concerned to inform the District Registrar of Citizen Registration, within a period of thirty days, about the cessation of his Indian citizenship under clause (ii) of sub-rule (1).

(3) in the event of an order under sub-rule (1), the person concerned, or in the event of his death his nearest relative, shall be duly informed about the deletion of any entry from the National Register of Indian Citizens:

Provided that any person aggrieved by the order of an authorized officer may prefer an appeal against such order to the Authority within a period of thirty days of such order.

(4) The appeal under sub-rule (3) shall be disposed off, after giving to the appellant an opportunity of being heard, and produce any documentary or oral evidence in support of his claim.

**11. Maintenance and updating of National Register of Indian Citizens.—**

(1) The Registrar General of Citizen Registration shall cause to maintain the National Register of Indian Citizens in electronic or some other form which shall entail its continuous updating on the basis of extracts from various Registers specified under the Registration of Births and Deaths Act, 1969 (18 of 1969) and the Act.

(2) It shall be the responsibility of the head of each and every family to ensure that any event of birth or death occurring in the family has been duly entered in, or deleted from, the Local Register of Indian Citizens.

(3) The Chief Registrar of Births and Deaths and all other officials engaged in the registration of births and deaths shall assist the Registrar General of Citizen Registration in updating the National Register of Indian Citizens as required under sub-rule (1).

**12. Modification of entries in National Register of Indian Citizens.—**The Sub-district or Taluk Registrar may, on an application made by the concerned person and after due verification, authorize the modification of any entry in respect of the following particulars in National Register of Indian Citizens, namely:—

- (a) change of name; or
- (b) the name of the applicant's parent in case his status has been altered by adoption under the relevant laws; or
- (c) change of residential address; or
- (d) change of marital status; or
- (e) change of sex.

**13. Issue of National Identity Cards.—**The Registrar General of Citizen Registration, or any officer authorized by him in this behalf, shall issue the National Identity Card to every Citizen whose particulars are entered in the National Register of Indian Citizens under sub-rule (3) of rule 3.

**14. National identity Cards to be Government property and responsibility of Citizens to keep them properly.—**(1) The National Identity Card shall be the property at the Central Government.

(2) No person shall wilfully destroy, alter, transfer or use in any form the National Identity Card, except for the lawful purposes.

(3) On the happening of any of the events specified under sub-rule (1) of rule 10, the National Identity Card shall be surrendered, by the Citizen concerned or his nearest relative, as the case may be, to the Registrar General of Citizen Registration or any other authorized officer acting on his behalf.

(4) In the event of a loss of the National Identity Card, it shall be the duty of the Citizen or his nearest relative, as the case may be, to report the matter immediately to the nearest police station and the concerned Authority.

**15. Designation of National Registration Authority and officers.**—(1) On and from the date of commencement of these rules, the Registrar General, India shall be designated as the Registrar General of Citizen Registration, India who shall also function as such for the purposes of these rules.

(2) The Central Government may designate—

- (a) one or more officers as Additional or Joint or Deputy Registrar General of Citizen Registration and such other officers and staff as may be required; and
- (b) an officer as a Director, and one or more officers as Joint Director, Deputy Director, Assistant Director of Citizen Registration for each of the States and the Union territories along with requisite support staff, to assist the Registrar General of Citizen Registration in discharging the functions and responsibilities under these rules.

(3) The State Government shall notify a State Co-ordinator of National Registration not below the rank of a Secretary in the State Government or equivalent.

**16. Supervision and Control of Registrar General of Citizen Registration over District, Sub-district or Taluk and Local Registrars of Citizen Registration.**—(1) The State Governments shall designate an officer or a person as Local Registrar of Citizen Registration for each lowest geographical jurisdiction, that is to say, of a village or rural area or town, or ward or demarcated area (demarcated by the Registrar General of Citizen Registration) within a ward in a town or urban area who shall function as Local Registrar for the purpose of preparation of Local Register of Indian Citizens.

(2) Every Local Registrar of Citizen Registration shall function under the overall supervision of the Sub-district or Taluk Registrar of Citizen Registration.

(3) Every Sub-district or Taluk Registrar of Citizen Registration shall function under the overall supervision of the District Registrar of Citizen Registration.

(4) For the purposes of implementing and carrying out the provisions of these rules, the District Registrar, the Sub-district or Taluk Registrar and the Local Registrar of Citizen Registration shall be under the supervision and control of the Registrar General of Citizen Registration.

(5) The Registrar General of Citizen Registration or any officer authorized by him at any time may call for any records for examination, and issue directions regarding inclusion or exclusion of any individual or family particulars from the Population Register or Local Register of Indian Citizens, to the District Registrar, the Subdistrict or Taluk Registrar and the Local Registrar of Citizen Registration.

**17. Penal consequences in certain cases.**—Any violation of provisions of rules 5, 7, 8, 10, 11 and 14 shall be punishable with fine which may extend to one thousand rupees.

**18. Guidelines for collection of particulars of individuals, verification, issue of National Identity Cards, etc.**—The Registrar General of Citizen Registration may, in consultation with the Central Government, issue from time to time, such guidelines to the State Governments as are considered necessary for implementation of these rules.



## [SCHEDULE

[See rule 4A(4)]

SPECIAL PROVISIONS AS TO MANNER OF PREPARATION OF  
NATIONAL REGISTER OF INDIAN CITIZEN IN STATE OF ASSAM

1. Definitions.—(1) In this Schedule, unless the context otherwise requires,—

(a) "National Register of Citizens 1951" means the Register containing details of Indian citizens residing in the State of Assam, as mentioned in the National Register of Citizens which was prepared along with 1951 census under a directive of the Ministry of Home Affairs;

<sup>2</sup>[(b) "electoral rolls up to the midnight of the 24th day of March, 1971" means the electoral rolls containing details of voters prepared by the Election Commission of India or the State Election Commission of the State of Assam in a relevant period upto the midnight of the 24th day of March, 1971.]

(2) All other words and expressions used herein and not defined but defined in rule 2 of these rules, shall have the meanings, respectively, assigned to them in that rule.

2. Manner of preparation of draft National Register of Indian Citizen in State of Assam.—(1) (a) The District Magistrate shall cause to be published the copies of the National Register of Citizens 1951 and <sup>3</sup>[electoral rolls upto the midnight of the 24th day of March, 1971], as available, in sufficient numbers and publish it and send the same to the Local Register of Citizen Registration for wide circulation and public inspection in each village and ward.

(b) The Local Registrar of Citizen Registration shall select centrally located public places for display of the records and for issue and receipt of the application forms.

(c) The Local Registrar of Citizens Registration shall be the custodian of the records in the area under his jurisdiction and shall be responsible for its display during the office hours.

(2) The Local Registrar of Citizen Registration shall receive the filled up application forms, at the same place where the applications are issued, and issue the receipt thereof to the applicant.

(3) The Local Registrar of Citizen Registration, after the receipt of the application under sub-paragraph (2) shall scrutinize the applications and after its verification, prepare a consolidated list thereof which shall contain the names of the following persons, namely:—

(a) persons whose names appear in any of the <sup>3</sup>[electoral rolls upto the midnight of the 24th day of March, 1971] or in National Register of Citizens, 1951;

(b) descendants of the persons mentioned in clause (a) above.

3. Scrutiny of applications.—(1) The scrutiny of applications received under sub-paragraph (3) of paragraph 2 shall be made by comparing the information stated in the application form with the official records and the persons, of whom the information is found in order, shall be eligible for inclusion of their names in the consolidated list.

(2) The names of persons who have been declared as illegal migrants or foreigners by the competent authority shall not be included in the consolidated list:

Provided that the names of persons who came in the State of Assam after 1966 and before the 25th March, 1971 and registered themselves with the Foreigner Registration

1. Ins. by G.S.R. 803(E), dated 9th November, 2009 (w.e.f. 9-11-2009).

2. Subs. by G.S.R. 207(E), dated 23rd March, 2010, for clause (b) (w.e.f. 23-3-2010).

3. Subs. by G.S.R. 207(E), dated 23rd March, 2010, for "electoral rolls prior to the year 1971" (w.e.f. 23-3-2010).



Regional Officer and who have not been declared as illegal migrants or foreigners by the competent authority shall be eligible to be included in the consolidated list.

(3) The names of persons who are originally inhabitants of the State of Assam and their children and descendants, who are Citizens of India, shall be included in the consolidated list if the citizenship of such persons is ascertained beyond reasonable doubt and to the satisfaction of the registering authority;

(4) The Local Registrar of Citizens Registration may, in case of any doubt in respect of parental linkage or any particular mentioned in the application received under sub-paragraph (3) of paragraph 2, refer the matter to the District Magistrate for investigation and his decision and Local Registrar of Citizens Registration shall also inform the same to the individual or the family;

[(5) The Local Registrar of Citizens Registration may, in respect of a person who—

(a) was residing in a place other than the State of Assam up to the midnight of the 24th day of March, 1971; or

(b) has shifted from one district to another within the State of Assam up to the midnight of the 24th day of March, 1971,

verify information relating to such person through inter-state correspondence, or, as the case may be, through inter-district correspondence.]

4. Publication of consolidated list.—(1) The Local Registrar of Citizen Registration shall, after completion of scrutiny of all applications, prepare the consolidated list village and ward wise and authenticate each entry in the list.

(2) The District Magistrate, shall cause to publish the consolidated list, prepared and authenticated under sub-paragraph (1), as draft of the National Registrar of Indian Citizens in the State of Assam, and cause to publish a public notice with regard to publication of the draft National Register of Indian Citizens in the State of Assam in the local news paper having wide circulation in the village and ward inviting objections and suggestions on it.

(3) The Local Registrar of Citizen Registration may at any time before the final publication of the National Register of Indian Citizens in the State of Assam may cause or direct to cause verification of names of such persons considered necessary.

(4) The Local Registrar of Citizen Registration shall take special care in attending the instances of allegation of undue harassment, if brought to their notice during the conduct of verification and take necessary action as he may consider appropriate.

(5) The report of the verification shall be examined by the District Registrar of Citizen Registration.

(6) The District Registrar of Citizen Registration shall, by order, and for reasons to be recorded in writing for inclusion or, as the case may be, exclusion of names, dispose of the report of the verification, and the report of verification which are allowed for inclusion of names and which are not allowed for inclusion shall be kept separately, village and ward wise along with a list of all such cases.

5. Publication of additional list.—(1) After the decision of the District Registrar of Citizens Registration under sub-paragraph (6) of paragraph 4, the additional list, if any, to the draft National Register of Indian Citizens shall be published in the manner specified under paragraph 2.

6. Claims and objection.—(1) Any person may—

(a) whose names do not appear in the draft National Register of Indian Citizens published under paragraph 2 or in the additional list published under

paragraph 4, file his claim, along with necessary documents in support of thereof; or

- (b) object to inclusion of any name in the draft National Register of Indian Citizens published under paragraph 2 or in the additional list published under paragraph 4,

within a period of thirty days from the date of such publication, before the Local Registrar of Citizen Registration.

(2) The Local Registrar of Citizen Registration shall maintain the list of claims received under clause (a) of sub-paragraph (1) and the objections received under clause (b) of sub-paragraph (1) in separate registers in 'chronological order;

(3) The Local Registrar of Citizen Registration shall, give a notice to every person, who has filed his claim or objection under sub-paragraph (1) to file documents, if any, in support of his claim or objection, and after giving the reasonable opportunity of hearing to the applicant or objector, dispose of the claim or, as the case may be, the objection.

7. **Publication of supplementary list.**—The Local Registrar of Citizen Registration shall, after the disposal of claims and the objections under sub-paragraph (3) of paragraph 6, prepare and publish a supplementary list for inclusion or deletion of names, as the case may be, and thereafter, the Registrar General of Citizens Registration shall publish the final National Register of Indian Citizens in the State of Assam.

8. **Appeal.**—Any person, not satisfied with the outcome of the decisions of the claims and objections under paragraph 7, may prefer appeal, before the designated Tribunal constituted under the Foreigners (Tribunals) Order, 1964 within a period of sixty days from the date of such order; and on the disposal of appeal by the Tribunals the names shall be included or deleted, as the case may be, in the National Register of Indian Citizens in the State of Assam.]

...

**THE CENSUS ACT, 1948**  
**(Act No. 37 of 1948)**  
**As amended in 1994**

[3<sup>rd</sup> September, 1948]

**An act to provide for certain matters in connection  
with the taking of Census**

WHEREAS it is expedient to provide for the taking of census in <sup>1\*\*\*</sup> India or any part thereof whenever necessary or desirable and to provide for certain matters in connection with the taking of such census;

It is hereby enacted as follows: -

Short title  
and extent.

1. (1) This Act may be called the Census Act, 1948.

<sup>2</sup>[(2) It extends to the whole of India. <sup>3\* \* \*</sup>]

Definitions.

<sup>5</sup>[2. In this Act, unless the context otherwise requires,-

(a) "premises" means any land, building or part of a building and includes a hut, shed or other structure or any part thereof;

(b) "prescribed" means prescribed by rules made under this Act;

(c) "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise.

Rule of  
construction  
respecting  
enactments  
not  
extending to  
Jammu and  
Kashmir.

2. Any reference in this Act to the Indian Penal Code, the Indian Evidence Act, 1872 or the Code of Criminal Procedure, 1973 shall, in relation to the State of Jammu and Kashmir, be construed as a reference to the corresponding enactment in force in that State.] 45 of 1860 1 of 1872 2 of 1974

1. The Act has been extended to:-

Goa, Daman and Diu by Reg. 11 of 1963, S.3 and Sch. with modifications to the whole of the Union Territory of Lakshadweep vide Reg.8 of 1965, S.3 and Sch.(w.e.f. 1-10-1987).

The State of Sikkim vide Notification No. 3465 dated 21-9-1976 (w.e.f. 13-9-1976).

2. The words "the Provinces and Acceding States of" rep. by A.O. 1950.

3. Subs. ibid. for the former sub-section.

4. The words "except the State of Jammu and Kashmir" omitted by Act 22 of 1959, S.2.

5. Subs. by Act 11 of 1994, S.2, for S.2.

Central  
Government  
to take  
Census.

3. The Central Government may, by notification in the Official Gazette, declare its intention of taking a census in the whole or any part of the territories to which this Act extends, whenever it may consider it necessary or desirable so to do and thereupon the census shall be taken.

Appointment  
of Census  
staff.

4. (1) The Central Government may appoint a Census Commissioner to supervise the taking of the census throughout the area in which the census is intended to be taken, and <sup>5</sup>[Directors of Census Operations] to supervise the taking of the census within the several States.

(2) The State Government may appoint persons as census-officers <sup>2</sup>[with such designations as that Government may deem necessary] to take, or aid in, or supervise the taking of, the census within any specified local area and such persons, when so appointed, shall be bound to serve accordingly.

(3) A declaration in writing, signed by any authority authorised by the State Government in this behalf, that any person has been duly appointed a census-officer for any local area shall be conclusive proof of such appointment.

(4) The State government may delegate to such authority as it thinks fit the power of appointing census-officers conferred by sub-section (2).

Staff of every  
local authori-  
ty to be made  
available for  
taking  
census.

<sup>3</sup>[4A. Every local authority in a State shall, when so directed by a written order by the Central Government or by an authority appointed by that Government in this behalf, make available to any Director of Census Operations such staff as may be necessary for the performance of any duties in connection with the taking of census.]

Status of  
Census  
authorities as  
public  
servants.

5. The Census Commissioner, all <sup>4</sup>[Directors of Census Operations] and all census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

45 of 1860

1. Subs. by Act 56 of 1974, S.3 and Sch.II for "Superintendent of Census Operation" (w.e.f. 20-12-1974)

2. Ins. by Act 11 of 1994, S.3.

3. Ins. by S.4 ibid.

4. Subs. by Act 56 of 1974, S.3 and Sch II "Superintendent of Census Operations" (w.e.f. 20-12-1974).

Discharge of  
duties of  
census  
officers in  
certain cases.

6. (1) Where the District Magistrate, or such authority as the State Government may appoint in this behalf, by a written order so directs –

- (a) every officer in command of any body of men belonging to the naval, military or air forces, or of any vessel of war, of India,
- (b) every person (except a pilot or harbourmaster) having charge or control of a vessel,
- (c) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up or of any public, charitable, religious or educational institution,
- (d) every keeper, secretary or manager of any sarai, hotel, boarding-house, lodging-house, emigration depot or club,
- (e) every manager or officer of a railway or any commercial or industrial establishment, and
- (f) every occupant of immovable property wherein at the time of the taking of the census persons are living,

shall perform such of the duties of a census-officer in relation to the persons who at the time of the taking of the census are under his command or charge, or are inmates of his house, or are present on or in such immovable property or are employed under him as may be specified in the order.

(2) All the provisions of this Act relating to census-officers shall apply, so far as may be, to all persons while performing such duties under this section, and any person refusing or neglecting to perform any duty which under this section he is directed to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

45 of 1860

Power to call upon certain persons to give assistance.

7. The District Magistrate, or such authority as the State Government may appoint in this behalf for any local area, may, by written order which shall have effect throughout the extent of his district or of such local area, as the case may be, call upon –

- (a) all owners and occupiers of land, tenure-holders, and farmers and assignees of land revenue, or their agents,
- (b) all members of the district, municipal, panchayat and other local authorities and officers and servants of such authorities, and
- (c) all officers and members of staff of any factory, firm or establishment, to give such assistance as shall be specified in the order towards the taking of a census of the persons who are, at the time of the taking of the census, on the lands of such owners, occupiers, tenure-holders, farmers and assignees, or in the premises of factories, firms and other establishments, or within the areas for which such local authorities are established, as the case may be, and the persons to whom an order under this section is directed shall be bound to obey it and shall, while acting in pursuance of such order, be deemed to be public servants within the meaning of the Indian Penal Code.

45 of 1960

Requisitioning premises, of vehicles, etc., for taking of a census.

<sup>1</sup>[7A. (1) If it appears to the Central Government that, in connection with taking of a census, –

- (a) any premises are needed or are likely to be needed, or
- (b) any vehicle, vessel or animal is needed or is likely to be needed,

that Government may by order in writing requisition such premises, or vehicle, vessel or animal, as the case may be, and make such further orders as may appear to it to be necessary or expedient in connection with the requisitioning.

(2) The requisition shall be effected by an order in writing addressed to the person deemed by the Central

<sup>1</sup> 1. Ins. by Act 11 of 1994, S.5

Government to be the owner or person in possession of the property, and such order shall be served in the prescribed manner on the person to whom it is addressed.

(3) Whenever any property is requisitioned under sub-section (1), the period of such requisition shall not extend beyond the period for which such property is required for any of the purposes mentioned in that sub-section.

Payment of  
compensation.

7B. (1) Whenever in pursuance of section 7A the Central Government requisitions any premises, there shall be paid to the persons interested compensation the amount of which shall be determined by taking into consideration the following, namely: -

- (i) the rent payable in respect of the premises or if no rent is so payable, the rent payable for similar premises in the locality;
- (ii) if in consequence of the requisition of the premises the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

Provided that where any person interested being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government may determine:

Provided further that where there is any dispute as to the title to receive the compensation or as to the apportionment of the amount of compensation, it shall be referred by the Central Government to an arbitrator appointed in this behalf by that Government for determination, and shall be determined in accordance with the decision of such arbitrator.

Explanation - In this sub-section, the expression "person interested" means the person who was in actual possession of the premises requisitioned under section 7A immediately before the requisition, or where no person was in such actual possession, the owner of such premises.

(2) Whenever in pursuance of section 7A the Central Government requisitions any vehicle, vessel or animal, there shall be paid to the owner thereof compensation the amount of which shall be determined by the Central Government on the basis of the fares or rates prevailing in the locality for the hire of such vehicle, vessel or animal:

Provided that where the owner of such vehicle, vessel or animal being aggrieved by the amount of compensation so determined makes an application within the prescribed time to the Central Government for referring the matter to an arbitrator, the amount of compensation to be paid shall be such as the arbitrator appointed in this behalf by the Central Government may determine:

Provided further that where immediately before the requisitioning the vehicle or vessel was by virtue of a hire-purchase agreement in the possession of a person other than the owner, the amount determined under this sub-section as the total compensation payable in respect of the requisition shall be apportioned between that person and the owner in such manner as they may agree upon, and in default of agreement, in such manner as an arbitrator appointed by the Central Government in this behalf may decide.

Power to  
obtain  
information.

7C. The Central Government may, with a view to requisitioning any property under section 7A or determining the compensation payable under section 7B, by order, require any person to furnish to such authority as may be specified in the order such information in his possession relating to such property as may be so specified.

Power of  
entry into  
and  
inspection of  
premises,  
etc.

7D. Any person authorised in this behalf by the Central Government may enter into any premises and inspect such premises and any vehicle, vessel or animal therein for the purpose of determining whether, and if so in what manner, an order under section 7A should be made in relation to such premises, vehicle, vessel or animal, or with a view to securing compliance with any order made under that section.

Eviction from  
requisitioned  
premises.

7E. (1) Any person remaining in possession of any requisitioned premises in contravention of any order made under section 7A may be summarily evicted from the premises by any officer empowered by the Central Government in this behalf.



(2) Any officer so empowered may, after giving to any woman not appearing in public reasonable warning and facility to withdraw, remove or open any lock or bolt or break open any door of any building or do any other act necessary for effecting such eviction.

Release of  
premises  
from  
requisition.

7F. (1) When any premises requisitioned under section 7A are to be released from requisition, the possession thereof shall be delivered to the person from whom possession was taken at the time when the premises were requisitioned, or if there were no such person, to the person deemed by the Central Government to be the owner of such premises, and such delivery of possession shall be a full discharge of the Central Government from all liabilities in respect of such delivery, but shall not prejudice any rights in respect of the premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered.

(2) Where the person to whom possession of any premises requisitioned under section 7A is to be given under sub-section (1) cannot be found or is not readily ascertainable or has no agent or any other person empowered to accept delivery on his behalf, the Central Government shall cause a notice declaring that such premises are released from requisition to be affixed on some conspicuous part of such premises and publish the notice in the Official Gazette.

(3) When a notice referred to in sub-section (2) is published in the Official Gazette, the premises specified in such notice shall cease to be subject to requisition on and from the date of such publication and be deemed to have been delivered to the person entitled to possession thereof, and the Central Government shall not be liable for any compensation or other claim in respect of such premises for any period after the said date.

Delegation of  
functions of  
the Central  
Government  
with regard  
to  
requisition-  
ing.

7G. The Central Government may, by notification in the Official Gazette, direct that any powers conferred or any duty imposed on that Government by any of the provisions of sections 7A to 7F shall, under such conditions, if any, as may be specified in the direction, be exercised or discharged by such officer as may be specified.

Penalty for  
contraven-  
tion of any  
order  
regarding  
requisition-  
ing.

7H. If any person contravenes any order made under section 7A or section 7C, he shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.]

Asking of  
questions  
and obliga-  
tion to  
answer.

8. (1) A census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the <sup>1</sup>[Central Government] and published in the Official Gazette, he may be directed to ask.

(2) Every person of whom any question is asked under sub-section (1) shall be legally bound to answer such question to the best of his knowledge or belief :

Provided that no person shall be bound to state the name of any female member of his household, and no woman shall be bound to state the name of her husband or deceased husband or of any other person whose name she is forbidden by custom to mention.

Occupier to  
permit access  
and affixing  
of numbers.

9. Every person occupying any house, enclosure, vessel or other place shall allow census-officer such access thereto as they may require for the purposes of the census and as, having regard to the customs of the country, may be reasonable, and shall allow them to paint on, or affix to, the place such letters, marks or numbers as may be necessary for the purposes of the census.

Occupier or  
manager to  
fill up  
schedule.

10. (1) Subject to such orders as the <sup>2</sup>[Census Commissioner] may issue in this behalf, a census-officer may, within the local area for which he is appointed, leave or cause to be left a schedule at any dwelling-house or with the manager or any officer of any commercial or industrial establishment, for the purpose of its being filled up by the occupier of such house or of any specified part thereof or by such manager or officer with such particulars as the <sup>2</sup>[Census Commissioner] may direct regarding the inmates of such house or part thereof, or the persons employed under such manager or officer, as the case may be, at the time of the taking of the census.

1. Subs. by Act 11 of 1994, S.6.

2. Subs. by S.7, *ibid*.

(2) When such schedule has been so left, the said occupier, manager or officer, as the case may be, shall fill it up or cause it to be filled up to the best of his knowledge or belief so far as regards the inmates of such house or part thereof or the persons employed under him, as the case may be, at the time aforesaid, and shall sign his name thereto and, when so required, shall deliver the schedule so filled up and signed to the census-officer or to such person as the census-officer may direct.

Penalties.

11. (1) <sup>1</sup>[(a) Any census-officer or any person lawfully required to give assistance towards the taking of census who refuses to perform any duty imposed upon him by this Act or any rule made thereunder, or any person who hinders or obstructs another person in performing any such duty, or

(aa) any census-officer or any person lawfully required to give assistance towards the taking of a census who neglects to use reasonable diligence in performing any duty imposed upon him or in obeying any order issued to him in accordance with this Act or any rule made thereunder, or any person who hinders or obstructs another person in performing any such duty or obeying any such order, or;

(b) any census-officer who intentionally puts any offensive or improper question or knowingly makes any false return or, without the previous sanction of the Central Government or the State Government, discloses any information which he has received by means of, or for the purposes of, a census return, or

(c) any sorter, compiler or other member of the census staff who removes, secretes, damages or destroys any census document or deals with any census document in a manner likely to falsify or impair the tabulations of census results, or

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1. Sub. by Act 11 of 1994, S.8

<sup>1</sup>[(ca) any local authority which fails to comply with an order made under section 4A, or;]

(d) any person who intentionally gives a false answer to, or refuses to answer to the best of his knowledge or belief, any question asked of him by a census-officer which he is legally bound by section 8 to answer, or

(e) any person occupying any house, enclosure, vessel or other place who refuses to allow a census-officer such reasonable access thereto as he is required by section 9 to allow, or

(f) any person who removes, obliterates, alters, or damages any letters, marks or numbers which have been painted or affixed for the purposes of the census, or

(g) any person who, having been required under section 10 to fill up a schedule, knowingly and without sufficient cause fails to comply with the provisions of that section, or makes any false return thereunder, or

(h) any person who trespasses into a census office,

shall be punishable with fine which may extend to one thousand rupees and in case of a conviction under part <sup>1</sup>[(a), (b) or (c) shall also be punishable with imprisonment which may extend to three years.]

(2) Whoever abets any offence under sub-section (1) shall be punishable with fine which may extend to one thousand rupees.

Sanction  
required for  
prosecutions.

12. <sup>2</sup>[Without prejudice to the provisions of section 197 of the Code of Criminal Procedure, 1973, no prosecution under this Act shall be instituted except with the previous sanction, -

2 of 1974

(a) in the case of a person who is employed or was at the time of commission of the alleged offence employed -

(i) in a company, as defined in section 3 of the

<sup>1</sup> 1. Subs. by Act 11 of 1994, S.8

Companies Act, 1956, in which not less than fifty-one percent of the paid-up capital is held by the Central Government or any company which is a subsidiary thereof within the meaning of that Act, or

1 of 1956

- (ii) by a corporation or a local authority established by or under a Central Act which is owned or controlled by the Central Government,

of the Central Government or of an authority authorised in this behalf by that Government; and

- (b) in the case of a person other than referred to in clause (a) of the State Government.]

Operation of other laws not barred.

13. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act :

Provided that no such prosecution shall be instituted except with the previous sanction referred to in section 12.

Certain offences to be cognizable and triable summarily.

<sup>1</sup>[13A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer or court shall take cognizance of any offence under part (a), (b) or (c) of sub-section (1) of section 11, except upon information received from or on a complaint made by, as the case may be, the Director of Census Operations or any officer authorised by him in this behalf.

2 of 1974

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under part (a), (b) or (c) of sub-section (1) of section 11 may be tried summarily.]

2 of 1974

2. Subs. by S.9, *ibid.*

1. Ins. by Act 11 of 1994, S. 10

Jurisdiction.

14. No Court inferior to that of a <sup>1</sup>[Metropolitan Magistrate or a Judicial Magistrate of the first class], shall try, whether under this Act or under any other law, any act or omission which constitutes an offence under this Act.

Records of census not open to inspection nor admissible in evidence.

15. No person shall have a right to inspect any book, register or record made by a census-officer in the discharge of his duty as such, or any schedule delivered under section 10, and notwithstanding anything to the contrary in the Indian Evidence Act, 1872, no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding whatsoever or in any criminal proceeding other than a prosecution under this Act or any other law for any act or omission which constitutes an offence under this Act.

1 of 1872

Protection of service interests of members of census staff.

<sup>2</sup>[15A. No member of the census staff shall suffer any disability in service by reason of his being on census duty and the period spent by him on such census duty shall be deemed to be the duty under his lending employer and any duty performed under this Act shall not in any manner affect the right of promotion or other advancement in his original service.

Protection of action taken in good faith.

15B. No suit, prosecution or other legal proceeding shall lie against the Census Commissioner or any Director of Census Operations or any census-officer or any member of the census staff for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.]

Temporary suspension of other laws as to mode of taking census in municipalities.

16. Notwithstanding anything in any enactment or rule with respect to the mode in which a census is to be taken in any municipality, the municipal authority, in consultation with the <sup>3</sup>[Director of Census Operations] or with such other authority as the State Government may authorise in this behalf, shall, at the time appointed for the taking of any census cause the census of the municipality to be taken wholly or in part by any method authorised by or under this Act.

1. Subs. by Act 11 of 1994, S.11

2. Ins. by S.12, ibid.

3. Ins. by Act 56 of 1974 S.3 and Sch II "Superintendent of Census Operations" (w.e.f. 20-12-1974).

Grant of  
statistical  
abstracts.

17. <sup>1</sup>[Subject to the provisions of section 15, the Census Commissioner or any Director of Census Operations] may, if he so thinks fit, at the request and cost to be determined by him of any local authority or person, cause abstracts to be prepared and supplied containing any such statistical information as can be derived from the census returns for <sup>2</sup>[India or any State] as the case may be, being information which is not contained in any published report and which in his opinion it is reasonable for that authority or person to require.

Power to  
extend the  
provisions of  
Act to other  
operations.

<sup>3</sup>[17A. The Central Government may, by notification in the Official Gazette, extend the provisions of this Act, with such restrictions and modifications as it thinks fit, to pre-tests, pilot studies, census of houses which precede the population count and post enumeration check and evaluation studies or statistical surveys or any other operation as may be deemed necessary for the purpose of census.]

Power to  
make rules.

18. (1) The Central Government may make rules by notification in the Official Gazette for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the Central Government may make rules providing for the appointment of census-officers and of persons to perform any of the duties of census-officers or to give assistance towards the taking of a census, and for the general instructions to be issued to such officers and persons <sup>4</sup>[and providing for the manner of service of orders regarding requisitioning of premises, or vehicle; vessel or animal and the time within which the application may be made to it by any interested person aggrieved by the amount of compensation determined under section 7 B for referring the matter to an arbitrator.]

(3) <sup>5</sup>[Every rule made under this Section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of 30 days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session

<sup>1</sup> Act 11 of 1994, S.13

<sup>2</sup> Subs. by the AO 1950, for "the Provinces of India or the Province".

<sup>3</sup> Ins. by Act 11 of 1994, S.14

<sup>4</sup> Added by S.15, ibid.

<sup>5</sup> Ins. by Act 4 of 1986, S.2 & Sch. (w.e.f. 15-3-1986).

immediately following the session or the successive sessions aforesaid, both Houses agree that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]



*MINISTRY OF HOME AFFAIRS*  
(Office of the Registrar General, India)  
NOTIFICATION  
New Delhi, the 31<sup>st</sup> December, 1990.  
(As amended on 19.7.94)

S.O. 967(E). – In exercise of the powers conferred by sub – section (1) of section 18 of the Census Act, 1948 (37 of 1948), the Central Government hereby makes the following rules, namely: -

1. (1) **Short title and commencement.** - These rules may be called the Census Rules, 1990.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. **Definitions.** - In these rules unless the context otherwise requires :-

- (a) "Act" means the Census Act, 1948 (37 of 1948);
- (b) "Census Commissioner" means the Census Commissioner appointed under sub-section (1) of section 4 of the Act;
- (c) "Census Schedule" means the schedule containing questions referred to in sub-section (1) of section 8 of the Act;
- (d) "Charge Officer" "Additional Charge Officer" and "Sub Charge Officer" mean the census officers appointed as such under sub-section (2) of section 4 of the Act and includes Tehsildar, Mamlatdar, Block Development Officer, Chief Administrative Officer of a town, executive officer and other officers;
- (e) "Director of Census Operations" means the Director of Census Operations appointed under sub- section (1) of section 4 of the Act to supervise the taking of census within a State or Union Territory;
- (f) "District Census Officer", "Sub- divisional Census Officer" and "Additional District Census Officer" mean the census officers appointed under sub-section (4) of section 4 of the Act;
- (g) "Enumerator" means an officer appointed under sub-section (4) of section 4 of the Act;
- (h) "Joint Director of Census Operations", "Deputy Director of Census Operations" and "Assistant Director of Census Operations" mean officers assisting the Director of Census Operations;

- (i) "Principal Census Officer" means a census officer designated as such under sub-section (2) of section 4 of the Act;
- (j) "Supervisor" means an officer appointed under sub-section (4) of section 4 of the Act;
- [(k) All other words and expressions used herein and not defined but defined in the Act, shall have the meanings respectively assigned to them in Act.]<sup>1</sup>

3. **Appointment of Census Officers :-** The State Governments and the Union territory Administrations in order to aid the taking of the census within their States or Union territories, may appoint officers from against the category mentioned in column 2 as census officers within their jurisdictions with such designation mentioned in column 1 of the Table below.

TABLE

	Designation	Officers to be appointed
	1	2
1.	Principal Census Officer	District Collectors/ Magistrates/ Commissioners or administrative heads of Corporations or any nominated Officer.
2.	District/Additional district/ Deputy district/Sub-divisional district/City/Additional City Census, Officer.	District Collectors/ Magistrates/ Officers assisting District Collectors/ Magistrates/ Commissioner/ District Sub-divisional Officers or Revenue Divisional Officers.
3.	Charge Officer/ Assistant Charge Officer/ Additional Charge Officer and Sub-Charge Officer.	Tehsildars/ Additional Tehsildars/ Mamlatdars/ Block Development Officer/ Chief Administrative Officer of towns/ Executive Officers and other Officers.
4.	Supervisor	Officers generally of a rank higher than enumerators or any person.
5.	Enumerator	Teachers, Clerks or any official or any person.

4. **Designating of Officers .-** The [Central Government ]<sup>2</sup> may designate the Director of Census Operations, the Joint Director of Census Operations, the Deputy Director of Census Operations and Assistant Director of Census Operations as the Chief Principal Census Officer, Joint Chief Principal Census Officer, Deputy Chief Principal Census Officer and Assistant Chief Principal Census Officer [for the States and the Union Territories]<sup>3</sup>.

1:- Inserted by notification dated 19.7.94.

2:- Replaced the earlier words "State Govts. & the Union Territory Administrations". By notification dated:- 19.7.94.

3:- Replaced the earlier words "within the jurisdiction of the State or Union Territory concerned". By notification dated 19.7.94.

**5. Functions of the Census Officers. -**

**(1) The Census Commissioner shall,-**

- (a) take, aid in and supervise the taking of the census within the country;
- (b) cause the Directors of Census Operations to be appointed for each State or Union territory, as the case may be;
- (c) devise the census schedules or questionnaires and provide to the State Governments or Union territory Administrations for publication in their respective Gazette in order to canvass in the census;
- (d) compile and provide guidance to the Directors of Census Operations of States and Union territories in taking the census and computation of results; and
- (e) publish the census statistics through publications or magnetic media.

**(2) The Director of Census Operations shall, -**

- (a) take, aid in and supervise the taking of the census within the limit of his State or Union territory;
- (b) prepare village or hamlet lists, classify places as towns according to demographic criteria, group places to form urban agglomeration, standard urban areas, etc. according to instructions from the Census Commissioner and coordinate the field work of house numbering and houselisting as per instructions from the Census Commissioner;
- (c) provide provisional population figures to the Census Commissioner, India through the District Census Officers within such time as is specified;
- (d) compile and provide assistance to Census Commissioner in compilation of the statistical data as per procedures laid down by the Census Commissioner;
- (e) publish statistics collected and computed during the census relating to the State or Union territory, as the case may be with the approval of the Census Commissioner;
- (f) provide the census material required in taking the census to census-officers in accordance with the guidelines provided by the Census Commissioner in this regard;
- (g) arrange to provide necessary publicity to census at the appropriate time; and

- (h) coordinate the work of appointment of census-officers and arrangements for their training.

(3) The Principal Census Officer shall, -

- (a) cause the required number of District or Sub-Divisional Census Officers or Charge officers to be appointed for taking census in the district or municipal corporation or panchayat area, etc.;
- (b) take, aid in and supervise the houselisting and taking of the census within the limit of the district or municipal corporation or panchayat areas, town area committee/notified areas and the like and forward the result alongwith the filled in schedules and blank forms to the Director of Census Operations within the period specified by him;
- (c) arrange for the training to Enumerators, Supervisors and Charge Officers so as to enable them to perform their duties efficiently and within the time specified by the Director of Census Operations; and
- (d) take action and prosecute any defaulting person with the previous sanction of the State Government or of an authority authorised in this behalf by the State Government.

(4) The District/Additional District or Sub-Divisional Census Officer shall, -

- (a)(i) cause the required number of Charge Officers and other census officers in a district or sub-division to be appointed;
- (ii) cause the entire area of a district to be divided into well demarcated census divisions, namely, charges, supervisor's circles and enumerator's blocks as per instruction issued in this behalf by the Director of Census Operations;
- (iii) cause the upto date list of villages and towns to be compiled and their jurisdictional maps prepared;
- (iv) assist the Director of Census Operations in compiling the related statistical data as per his requirement;
- (v) give proper publicity to census programmes from time to time so as to get proper responses from the public;
- (b) impart training to Charge Officers and cause proper training to be imparted to Supervisors and Enumerators through Charge Officers so as to enable them to perform their duties efficiently and to assist the Principal Census Officers to take, aid in and supervise the houselisting and taking of census within the limits of the districts, municipal corporations, panchayats etc.;

- (c) collect the filled in and blank forms of the various schedules alongwith abstracts or any other statement that may be required to be prepared by the Enumerators;
  - (d) consolidate the summary of enumerator's abstract or statement for the entire district;
  - (e) forward the filled in or blank forms of each schedule alongwith the consolidated summary of enumerator's abstract or statement for district and similar collected abstracts for each Charge Officer or census-officer, through the Principal Census Officer to the Director of Census Operations for the State or Union territory Administration; and
  - (f) carry out such other jobs necessary for the successful taking of the census;
- (5) The Charge Officer shall, -
- (a) cause the required number of Supervisors and Enumerators to be appointed within the jurisdiction of his charge;
  - (b) prepare basic documents like general village registers and charge registers as per instructions from the Director of Census Operations within the time schedule;
  - (c) familiarise himself with the enumeration instructions and cause the Supervisors and Enumerators to be trained so as to enable them to perform their duties efficiently;
  - (d) ensure that the work goes on according to the time schedule;
  - (e) ensure full coverage, accuracy and timelines in taking census;
  - (f) collect the filled in and blank forms of the various schedules from all the Supervisors in the charge;
  - (g) provide provisional population figures to the Census Commissioner, through the Director of Census Operations within a week on completion of census operations;
  - (h) consolidate the summary of enumerator's abstract of various enumeration blocks and statements and forward these to the District Census Officers or Sub-divisional Officers alongwith the filled in and blank schedules; and
  - (i) carry out such other tasks as may be necessary for the successful taking of the census.

- (6) The Supervisor shall, -
- (a) help the Enumerators under his jurisdiction and ensure that work is done as per schedule and the coverage is complete; and
  - (b) collect the filled in and blank forms and statements from each Enumerator and forward the documents alongwith such statements he may be required to prepare, duly signed to the Charge Officer within two days of completion of census operations.
- (7) The Enumerator shall, -
- (a) prepare Notional Map and layout sketch of the allotted enumeration block;
  - (b) update the housenumbering;
  - (c) fill up the various schedules according to instructions issued to him;
  - (d) undertake revisional round and updating of records;
  - (e) prepare enumerator's abstract which shall consist of the location particulars of the enumeration block alongwith the total population by various characteristics asked for in the schedules and such other statements he may be required to compile; and
  - (f) hand over all documents, filled in and blank, to the Supervisors.

6. Census schedules and questionnaires,- The census schedules or questionnaires shall be notified by the [Central]<sup>1</sup> Government through Official Gazette under sub-section (1) of section 8 of the Act.

[6A. Declaration of the date and duration of Census.- The Central Government may by a notification published in the Official Gazette declare the date for the commencement of the census and the period during which the houselisting operations and population census shall take place.

6B. Manner of serving the order of requisition of premises and vehicles. - An order of requisition under section 7A, shall be served -

(a) where the person to whom such order is addressed is a corporation or firm -

in the manner provided for the service of summons in rule 2 of order XXIX or rule 3 of order XXX, as the case may be, in the first Schedule to the Code of Civil Procedure, 1908 (Act V of 1908); and

(b) where the person to whom such order is addressed is an individual -

(i) personally by delivering or tendering the order, or

(ii) by registered post, or

(iii) if the person cannot be found, by leaving an authentic copy of the order with any adult member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain.

6C. Time for application for reference to arbitration under section 7B. - The time within which any interested person, who is aggrieved by the amount of compensation determined under section 7B may make an application for referring the matter to arbitration shall be fourteen days from the date of determination of the amount of such compensation or where the amount of such compensation has been determined in the absence of the person interested or, as the case may be, the owner, fourteen days from the date on which the intimation of such determination is sent to that person or owner.<sup>2</sup>

1: - Replaced the earlier "State" by notification 19.7.94.

2: - Inserted by notification dated. 19.7.94.

7. Census data. - The Census Commissioner shall decide the items on which data may be released.

8. Notifications, Orders and Instructions to be issued by State Government - The State Governments and the Union territory Administrations shall, -

- (i) republish the intention of taking a census notified by the Central Government in their State or Union territory Gazettes;
- [(ia) republish the census schedules and questionnaires notified by the Central Government in their States or Union Territory Gazettes.]<sup>1</sup>
- (ii) publish a notification directing the public to cooperate in furnishing accurate and unambiguous information in respect of the questions that may be put to them through census alongwith an extract of penalties prescribed under section 11 of the Act;
- (iii) [republish]<sup>2</sup> in the gazette the reference date for the census and the period during which houselisting operations and population census will take place under section 3 of the Act;
- (iv) freeze the administrative boundaries of districts, tehsils, towns, etc. from the date to be intimated by the Census Commissioner which shall not be earlier than one year from the census reference date and till the completion of the census;
- (v) nominate a senior officer of the State Government at State Head Quarters as Nodal officer to liaise between Director of Census Operations and other Officers in Census work;
- (vi) impose restrictions on the Head of Department/ Officer on the transfer of officers/ officials once appointed as Supervisor/ Enumerator, without the proper consent of Principal/District Census Officer; and
- (vii) give wide publicity of the census through radio, audiovisuals, posters etc.

9. Custody of census schedules and connected papers, - After the completion of the taking of the census the canvassed census schedules shall be kept in the office of the Director of Census Operations or at such other place the Director of Census Operations may direct for processing the data collected.

1:- Inserted by notification dated. 19.7.94.

2:- Replaced the earlier word "publish" by notification dated, 19.7.94.



10. Canvassed schedules. - The canvassed schedules shall after processing is over be preserved at the office of the Director of Census Operations or at such other place the Director of Census Operations may direct.
11. Disposal of census schedules and other connected papers. - The schedules and other connected papers shall be disposed of totally or in part by the Director of Census Operations a year before the next census in accordance with the general or special directions as may be given by the Census Commissioner in this behalf.
12. General or special instructions. - The Census Commissioner and the Director of Census Operations may issue from time to time general or special instructions or such directions, to the Principal Census Officers and other census officers appointed under the Act, as may be necessary for the efficient conduct and timely completion of the census operations.

[No. A 27021/1/88 - Ad. I]

A.R. NANDA,  
Registrar General &  
Census Commissioner, India.

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## CRIMINAL TRIBES' ACT, 1871.

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## ACT No. XXVII OF 1871.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 12th October 1871*).

### An Act for the Registration of Criminal Tribes and Eunuchs.

Preamble.

WHEREAS it is expedient to provide for the registration, surveillance and control of certain criminal tribes and eunuchs; It is hereby enacted as follows:—

Short title.  
Commence-  
ment.

1. This Act may be called “The Criminal Tribes’ Act, 1871,” and it shall come into force on the passing thereof.

Local extent.

This section and section twenty extend to the whole of British India: the rest of this Act extends only to the territories under the governments of the Lieutenant-Governors of the North-Western Provinces and the Panjáb, respectively, and under the administration of the Chief Commissioner of Oudh.

### PART I.

#### CRIMINAL TRIBES.

Local Gov-  
ernment to  
report what  
tribes should  
be declared  
criminal.

2. If the Local Government has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences, it may report the case to the Governor General in Council, and may request his permission to declare such tribe, gang or class to be a criminal tribe.

Report to  
contain cer-  
tain particu-  
lars.

3. The report shall state the reasons why such tribe, gang or class is considered to be addicted to the systematic commission of non-bailable offences, and, as far as possible, the nature and the circumstances of the offences in which the members of the tribe are supposed to have been concerned; and shall describe  
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the manner in which it is proposed that such tribe, gang or class shall earn its living when the provisions hereinafter contained have been applied to it.

4. If such tribe, gang or class has no fixed place of residence, the report shall state whether such tribe, gang or class follows any lawful occupation, and whether such occupation is, in the opinion of the Local Government, the real occupation of such tribe, gang or class, or a pretence for the purpose of facilitating the commission of crimes, and shall set forth the grounds on which such opinion is based; and the report shall also specify the place of residence in which such wandering tribe, gang or class is to be settled under the provisions hereinafter contained, and the arrangements which are proposed to be made for enabling it to earn its living therein.

Occupation of wandering tribe to be stated;

also proposed residence and means of livelihood.

5. If, upon the consideration of any such report, the Governor General in Council is satisfied that the tribe, gang or class to which it relates ought to be declared criminal, and that the means by which it is proposed that such tribe, gang or class shall earn its living are adequate, he may authorize the Local Government to publish in the Local Gazette a notification declaring that such tribe, gang or class is a criminal tribe, and thereupon the provisions of this Act shall become applicable to such tribe, gang or class.

Notification declaring tribe to be criminal.

6. No Court of Justice shall question the validity of any such notification on the ground that the provisions hereinbefore contained, or any of them, have not been complied with, or entertain in any form whatever the question whether they have been complied with; but every such notification shall be conclusive proof that the provisions of this Act are applicable to the tribe, gang or class specified therein.

Bar of jurisdiction of Courts in questions relating to notification.

7. When the notification mentioned in section five has been published, the Local Government may direct the Magistrate of any district in which such tribe, gang or class, or any part thereof, is at the time resident, to make a register of the members of such tribe, gang or class, or of any part thereof.

Register of members of such tribes.

The

The declaration of the Local Government that any such tribe, gang or class, or any part of it, is resident in any district, shall be conclusive proof of such residence.

Procedure in making register.

8. Upon receiving such direction, the said Magistrate shall publish a notice in the place where the register is to be made, calling upon all the members of such tribe, gang or class, or of such portion thereof as is directed to be registered, to appear, at a time and place therein specified, before such persons as he appoints, and to give those persons such information as may be necessary to enable them to make the register.

Penalties for failing to appear, refusing or giving false information.

9. Any member of any such tribe, gang or class who, without lawful excuse, the burthen of proving which shall lie upon him,

shall fail to appear according to such notice, or who shall intentionally omit to furnish such information,

or who shall furnish, as true, information on the subject which he knows or has reason to believe to be false,

shall be deemed guilty of an offence under the first parts of section one hundred and seventy-four, or one hundred and seventy-six, or one hundred and seventy-seven of the Indian Penal Code, respectively, as the case may be.

Charge of register.

Reporting desirable alterations.

10. The register, when made, shall be kept by the District Superintendent of Police, who shall, from time to time, report to the said Magistrate any alterations which ought to be made therein, either by way of addition or erasure.

By whom alterations to be made.

Notice to persons affected.

11. No alteration shall be made in such register except by or by order of the said Magistrate, and he shall write his initials against every such alteration. Notice shall be given of any such intended alteration, and of the time when, and place where, it is to be made, to every person affected thereby.

Complaints of entries in register.

12. Any person deeming himself aggrieved by any entry made, or proposed to be made, in such register, either when the register is first made or subse-

quently,

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quently, may complain to the said Magistrate against such entry, and the Magistrate shall retain such person's name on the register, or enter it therein, or erase it therefrom, as he may see fit.

Every order for the erasure of any such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order of entry, retention or erasure, passed by the said Magistrate on any such complaint, either on appeal by the person registered or proposed to be registered, or otherwise.

13. Any tribe, gang or class, which has been declared to be criminal, and which has no fixed place of residence, may be settled in a place of residence prescribed by the Local Government.

Settlement of tribe in place prescribed by Local Government.

14. Any tribe, gang or class which has been declared to be criminal, or any part thereof, may, by order of the Local Government, be removed to any other place of residence.

Removal to other place.

15. No tribe, gang or class, shall be settled or removed under the provisions of this Act until such arrangements as the Local Government shall, with the concurrence of the Governor General in Council, consider suitable, have been made for enabling such tribe, gang or class, or such part thereof as is to be so settled or removed, to earn a living in the place in or to which it is to be settled or removed.

Arrangements to be made prior to settlement or removal.

16. When the removal of any persons has been ordered under this Act, the register of such persons' names shall be transferred to the District Superintendent of Police of the district to which such persons are removed, and the Magistrate of the said district and the Commissioner of the division in which it is situated, shall thereupon be empowered to exercise respectively the powers provided in sections eleven and twelve.

Transfer of register of persons ordered to be removed.

17. The Local Government may, with the sanction of the Governor General in Council, place any tribe, gang or class, which has been declared to be criminal, or any part thereof, in a reformatory settlement.

Power to place tribe in reformatory settlement.

18. The

Power to  
make rules.

18. The Local Government may, with the previous consent of the Governor General in Council, make rules to prescribe—

- (1) the form in which the register shall be made by the said Magistrate;
- (2) the mode in which the said Magistrate shall publish the notice prescribed in section eight, and the means by which the persons whom it concerns, and the Headmen, Village-Watchmen and landowners or occupiers of the village, in which such persons reside, shall be informed of its publication;
- (3) the mode in which the notice prescribed in section eleven shall be given;
- (4) the limits within which persons whose names are on the register shall reside;
- (5) conditions as to holding passes, under which such persons may be permitted to leave the said limits;
- (6) conditions to be inserted in any such pass as to
  - (a) the places where the holder of the pass may go or reside;
  - (b) the officers before whom, from time to time, he shall be bound to present himself;
  - (c) and the time during which he may absent himself;
- (7) conditions as to answering at roll-call or otherwise, in order to satisfy the said Magistrate or persons authorized by him, that the persons whose names are on the register are actually present at given times within the said limits;
- (8) the inspection of the residences and villages of any such tribe, gang or class, and the prevention or removal of contrivances for enabling the residents therein to conceal stolen property, or to leave their place of residence without leave;
- (9) the terms upon which registered persons may be discharged from the operation of this Act;
- (10) the



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(10) the mode in which criminal tribes shall be settled and removed;

(11) the control and supervision of reformatory settlements;

(12) the works on which, and the hours during which, persons placed in a reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour after defraying the whole or such part of the expenses of their supervision and control as to the Local Government shall seem fit;

(13) the discipline to which persons endeavouring to escape from any such settlement, or otherwise offending against the rules for the time being in force, shall be submitted; the periodical visitation of such settlement, and the removal from it of such persons as it shall seem expedient to remove;

(14) and generally to carry out the purposes of this Act.

19. Any person violating any of the rules made under section eighteen shall be punished with rigorous imprisonment for a term which may extend to six months, or with fine, or with whipping, or with all or any two of those punishments; and, on any second conviction for a breach of any of the said rules, with rigorous imprisonment which may extend to one year, or with fine, or with whipping to be inflicted in the manner prescribed by any law in force for the time being in relation to whipping, or with all or any two of those punishments.

Penalties for  
breach of  
rules.

20. Any person registered under the provisions of this Act, who is found in any part of British India, beyond the limits so prescribed for his residence, without such pass as may be required by the said rules, or in a place or at a time not permitted by the conditions of his pass,

Arrest of  
registered  
person found  
beyond pre-  
scribed limits.

or who escapes from a reformatory settlement,

may be arrested without warrant by any police-officer or village-watchman, and taken before a Magistrate, who, on proof of the facts, shall order him

to

to be removed to the district in which he ought to have resided, or to the reformatory settlement from which he has escaped (as the case may be), there to be dealt with according to the rules under this Act for the time being in force.

The rules for the time being in force for the transmission of prisoners shall apply to all persons removed under this section: Provided that an order from the Local Government or from the Inspector General of Prisons shall not be necessary for the removal of such persons.

Duties  
of Village-  
Headmen,  
Village-  
Watchmen,  
&c.

21. It shall be the duty of every Village-Headman and Village-Watchman in a village in which any persons belonging to a tribe, class or gang which has been declared criminal reside, and of every owner or occupier of land on which any such persons reside, to give the earliest information in his power at the nearest police station of.

(1) the failure of any such person to appear and give information, as directed in section eight;

(2) the departure of any such person from such village or from such land (as the case may be).

And it shall be the duty of every Village-Headman and Village-Watchman in a village, and of every owner or occupier of land, to give the earliest information in his power at the nearest police station of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any such tribe, class or gang.

Penalty for  
breach of such  
duties.

22. Any Village-Headman, Village-Watchman, owner or occupier of land, who shall fail to comply with the requirements of section twenty-one, shall be deemed to have committed an offence under the first part of section one hundred and seventy-six of the Indian Penal Code.

Indemnity  
for past re-  
registrations  
and deten-  
tions.

23. All Magistrates and other persons are hereby indemnified for anything heretofore done under the circular order 18 of 1856 of the Judicial Commissioner of the Panjáb, or under any orders of the Local Governments of the North-Western Provinces or Oudh, relating to the registration or detention of tribes  
regarded

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regarded by such Local Governments as criminal tribes; and no suit or other proceeding shall be maintained against any such Magistrate or other person in respect of anything so done.

## PART II.

## EUNUCHS.

24. The Local Government shall cause the following registers to be made and kept up by such officer as, from time to time, it appoints in this behalf:—

*Registers of eunuchs and their property.*

(a) a register of the names and residences of all eunuchs residing in any town or place to which the Local Government specially extends this Part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section three hundred and seventy-seven of the Indian Penal Code, or of abetting the commission of any of the said offences; and

(b) a register of the property of such of the said eunuchs as, under the provisions hereinafter contained, are required to furnish information as to their property.

The term 'eunuch' shall, for the purposes of this Act, be deemed to include all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent.

*'Eunuch' defined.*

25. Any person deeming himself aggrieved by any entry made or proposed to be made in such register, either when the register is first made or subsequently, may complain to the said officer, who shall enter such person's name, or erase it, or retain it, as he sees fit.

*Complaints of entries in register.*

Every order for erasure of such person's name shall state the grounds on which such person's name is erased.

The Commissioner shall have power to review any order passed by such officer on such complaint, either on appeal by the complainant or otherwise.

26. Any

Penalty on  
registered  
eunuch ap-  
pearing in fe-  
male clothes;

or dancing in  
public, or for  
hire.

26. Any eunuch so registered who appears, dressed or ornamented like a woman, in a public street or place, or in any other place, with the intention of being seen from a public street or place,

or who dances or plays music, or takes part in any public exhibition, in a public street or place or for hire in a private house,

may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Penalty on  
registered  
eunuch keep-  
ing boy under  
sixteen.

27. Any eunuch so registered who has in his charge, or keeps in the house in which he resides, or under his control, any boy who has not completed the age of sixteen years, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Maintenance  
and education  
of boys whose  
parents  
cannot be  
found.

28. The Magistrate may direct that any such boy shall be returned to his parents or guardians, if they can be discovered. If they cannot be discovered, the Magistrate may make such arrangements as he thinks necessary for the maintenance and education of such boy, and may direct that the whole or any part of a fine inflicted under section twenty-seven may be employed in defraying the cost of such arrangements.

The Local Government may direct out of what local or municipal fund so much of the cost of such arrangements as is not met by the fine imposed, shall be defrayed.

Disabilities of  
registered  
eunuchs.

29. No eunuch so registered shall be capable—

- (a) of being or acting as guardian to any minor,
- (b) of making a gift,
- (c) of making a will, or
- (d) of adopting a son.

Power to re-  
quire infor-  
mation as to  
registered  
eunuch's pro-  
perty.

30. Any officer authorized by the Local Government in this behalf may, from time to time, require any eunuch so registered to furnish information as to all property, whether movable or immovable, of or to which he is possessed or entitled, or which is held in trust for him.

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# The Indian Contract Act, 1872

(9 of 1872)

*as amended by*  
The Banking Laws (Amendment) Act, 2012 (4 of 2013)

*with*  
Model Specimens of  
Damages on Breach of Contract and  
Execution of Deeds by Agents



*along with*  
SHORT NOTES

**Universal**  
Law Publishing Co. Pvt. Ltd.  
NEW DELHI - INDIA

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certain rate and the acceptance of the offer would constitute an agreement, but would fall short of amounting to a legal contract inasmuch as the date of delivery of the jaggery was not specified. Once the order is placed for such supply on such dates, that order amounts to a binding contract making it incumbent on the respondent to supply jaggery in accordance with the terms of the order and also making it incumbent on the Dy. General Manager to accept the jaggery delivered in pursuance of that order; *Union of India v. Maddala Thathaiiah*, (1964) 3 SCR 774.

#### Letter of intent

A letter of intent merely indicates a party's intention to enter into a contract with other party in future. It is prelude to contract. However, a letter of intent may be construed a letter of acceptance if such intention is evident from its terms; *Dresser Rand S.A. v. Bindal Agro Chem. Ltd.*, AIR 2006 SC 871.

#### What agreements are Contract

(i) If entering into a contract containing prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If contract incorporates certain terms and conditions in it, which are statutory then the said contract to that extent is statutory; *Thermal Power Ltd. v. State of Madhya Pradesh*, AIR 2000 SC 1005.

(ii) In order to constitute a contract, both the parties must consent to the agreement; *Steel Authority of India Ltd. v. Salem Stainless Steel Suppliers*, AIR 1994 SC 1415.

(iii) A person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act. The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant; *Mohoribibi v. Dharmodas Ghose*, (1903) 30 IA 114.

#### What agreements are not Contract

Agreement subject to ratification by others who are not parties to it is not a conclusive contract; *M.V. Shankar Bhat v. Claude Pinto (Deceased) by LRs*, (2003) 4 SCC 86.

11. Who are competent to contract.—Every person is competent to contract who is of the age of majority according to the law to which he is subject,<sup>1</sup> and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

### COMMENTS

#### Minor's contract of service

A contract of marriage, entered into by a father for the benefit of his minor child is not void for want of consideration, unlike a contract of service by a minor which is a contract of service entered into by a father on behalf of the minor which is not enforceable as it is void for want of consideration; *Raj Rani v. Prem Adib*, AIR 1949 Bom 215.

#### Minor's contract void

Where a mortgage was made by a minor and the money lender who had advanced money to the minor on the security of the mortgage sued the minor on the strength of the contract. It is held, having regard to sections 2, 10 and 11 of the Contract Act, that the Act makes it essential that the contracting parties should be competent to contract and that a minor's contract is void; *Mohoribibi v. Dharmodas Ghose*, (1903) ILR 30 Cal 539 (PC).

12. What is a sound mind for the purposes of contracting.—A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

1. See the Indian Majority Act, 1875 (9 of 1875).

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# The Drugs and Cosmetics Act, 1940 (23 of 1940)

*alongwith*

✓ The Drugs and Cosmetics Rules, 1945

*as amended by*

The Drugs and Cosmetics (2nd Amendment)  
Rules, 2015

(Vide G.S.R. 203(E), dated 18-3-2015)

&

★ The Drugs (Control) Act, 1950  
(26 of 1950)

★ The Cost Accounting Records (Bulk Drugs)  
Rules, 1974

*with*

*State Amendments &  
Short Comments*

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Provided that no separate fee shall be required to be paid along with application for import/manufacture of a new drug based on successful completion of phase clinical trials by the applicant:

Provided further that no fee shall be required to be paid along with the application by Central Government or State Government Institutes involved in clinical research for conducting trials for academic or research purposes.

(3) The licensing authority after being satisfied with the clinical trials, shall grant permission in Form 45 or Form 45-A or Form 46 or Form 46-A, as the case may be, subject to the conditions stated therein:

Provided that the licensing authority shall, where the data provided on the clinical trials is inadequate, intimate the applicant in writing, within six months, from the date of such intimation or such extended period, not exceeding a further period of six months, as the licensing authority may, for reasons to be recorded, in writing, permit, intimating the conditions which shall be satisfied before permission could be considered.

*Explanation.*—For the purpose of these rules investigational new drug means a new chemical entity or a product having therapeutic indication but which have never been earlier tested on human being.

<sup>14a</sup>[122-DAA. Definition of Clinical trial.—For the purpose of this Part, "Clinical trial" means a systematic study of new drug(s) in human subject(s) to generate data for discovering and/or verifying the clinical, pharmacological (including pharmacodynamic and pharmacokinetic) and/or adverse effects with the objective of determining safety and/or efficacy of the new drug.]

<sup>14a</sup>[122-DAB. Compensation in case of injury or death during clinical trial.—<sup>14b</sup>(1) In case of an injury occurring to the subject during the clinical trial, free medical management shall be given as long as required or till such time it is established that the injury is not related to the clinical trial, whichever is earlier.]

(2) In case the injury occurring to the trial subject is related to the clinical trial, such subject shall also be entitled for financial compensation as per order of the Licensing Authority defined under clause (b) of rule 21, and the financial compensation will be over and above any expenses incurred on the medical management of the subject.

<sup>14c</sup>[(2-A) In case, there is no permanent injury, the quantum of compensation shall be commensurate with the nature of the non-permanent injury and loss of wages of the subject.]

(3) In the case of clinical trial related death of the subject, his/her nominee(s) would be entitled for financial compensation, as per the order of the licensing authority defined under clause (b) of rule 21, and the financial compensation will be over and above any expenses incurred on the medical management of such subject.

14. Inserted by G.S.R. 32(E), dated 20-1-2005 (w.e.f. 20-1-2005).

14a. Inserted by G.S.R. 53(E), dated 30-1-2013 (w.e.f. 30-1-2013).

14b. Substituted by G.S.R. 889(E), dated 12-12-2014 (w.e.f. 12-6-2015).

14c. Inserted by G.S.R. 889(E), dated 12-12-2014 (w.e.f. 12-6-2015).

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(4) The expenses on medical management and financial compensation in the case of clinical trial injury or death of the trial subject shall be borne by the sponsor of the clinical trial.

(5) Any injury or death of the subject occurring in clinical trial due to following reasons shall be considered as clinical trial related injury or death and the subject or his/her nominee(s), as the case may be, are entitled for financial compensation for such injury or death:

(a) adverse effect of investigational product(s);

(b) violation of the approved protocol, scientific misconduct or negligence by the Sponsor or his representative or the investigator;

(c) failure of investigational product to provide intended therapeutic effect <sup>14d</sup>[where, the standard care, though available, was not provided to the subject as per the clinical trial protocol];

(d) use of placebo in a placebo-controlled trial <sup>14d</sup>[where, the standard care, though available, was not provided to the subject as per the clinical trial protocol];

(e) adverse effects due to concomitant medication excluding standard care, necessitated as part of approved protocol;

(f) for injury to a child in-utero because of the participation of parent in clinical trial;

(g) any clinical trial procedures involved in the study.

(6) The Sponsor, whether a pharmaceutical company or an institution shall give an undertaking along with the application for clinical trial permission to the licensing authority defined in clause (b) of rule 21, to provide compensation in the case of clinical trial related injury or death for which subjects are entitled to compensation.

(7) In case the Sponsor fails to provide medical management for the injury to the subject and/or financial compensation to the trial subject for clinical trial related injury or financial compensation to the subject's nominee(s) in case of clinical trial related death of the subject, the licensing authority may after giving an opportunity to show cause why such an order should not be passed, by an order in writing, stating the reasons thereof, suspend or cancel the clinical trial and/or restrict Sponsor including his representative(s) to conduct any further clinical trials in the country or take any other action deemed fit under the rules.]

<sup>14e</sup>[122-DAC. Permission to conduct clinical trial.—The licensing authority as defined in clause (b) of rule 21, on being satisfied that the data submitted along with the application in support of the proposed clinical trial is adequate in all respects, issue permission for conduct of clinical trial, subject to the following conditions, namely:—

(a) Clinical trial shall be conducted in compliance with the approved protocols, requirements of Schedule Y annexed to these rules,

<sup>14d</sup>. Inserted by G.S.R. 889(E), dated 12-12-2014 (w.e.f. 12-6-2015).

<sup>14e</sup>. Inserted by G.S.R. 63(E), dated 1-2-2013 (w.e.f. 1-2-2013).

good Clinical Practice Guidelines for conduct of clinical trials in India and other applicable regulations;

(b) Approval of the Ethics Committee shall be obtained before initiation of the study;

(c) Clinical trial shall be registered at Clinical Trials Registry of India before enrolling the first patient for the study;

(d) Annual status report of each clinical trial, as to whether it is ongoing, completed or terminated, shall be submitted to the licensing authority, and in case of termination of any clinical trial the detailed reasons for the same shall be communicated to the said licensing authority;

(e) Any report of serious adverse event occurring during clinical trial to the subject, after due analysis, shall be forwarded within ten days of its occurrence as per Appendix XI and in compliance with the procedures prescribed in Schedule Y;

(f) In case of an injury or death during the clinical trial to the subject of the clinical trial the applicant shall provide complete medical management and compensation in the case of trial related injury or death in accordance with rule 122-DAB and the procedures prescribed under Schedule Y, and the details of compensation provided in such cases shall be intimated to the licensing authority within thirty days of the receipt of the order of the said authority;

(g) The premises of Sponsor including their employees, subsidiaries and branches, their agents, contractors and sub-contractors and clinical trial sites shall be open to inspection by the officers authorised by the Central Drugs Standard Control Organisation, who may be accompanied by an officer of the State Drug Control Authority concerned, to verify compliance to the requirements of Schedule Y, Good Clinical Practices guidelines for conduct of clinical trials in India and other applicable regulations.

(h) The Sponsor including their employees, subsidiaries and branches, their agents, contractors and sub-contractors and clinical trial sites and the Investigator shall allow officers authorised by the Central Drugs Standard Control Organisation, who may be accompanied by an officer of the State Drug Control Authority concerned, to enter with or without prior notice, any premises of Sponsor including their employees, subsidiaries and branches, their agents, contractors and sub-contractors and clinical trial sites to inspect, search and seize any record, data, document, books, investigational drugs, etc., related to clinical trials and provide adequate replies to any queries raised by the inspecting authority in relation to the conduct of clinical trial.

(2) Notwithstanding the conditions specified in sub-rule (1) the licensing authority, on being satisfied that the data submitted along with the application in support of the proposed clinical trial is adequate in all

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(iii) In case of studies prematurely discontinued for any reason including lack of commercial interest in pursuing the new drug application, a summary report should be submitted within 3 months. The summary report should provide a brief description of the study, the number of patients exposed to the drug, dose and duration of exposure, details of adverse drug reactions (Appendix XI), if any, and the reason for discontinuation of the study or non-pursuit of the new drug application.

<sup>95</sup>[(iv)] Any report of the serious adverse event, after due analysis shall be forwarded by the sponsor to the Licensing Authority as referred to in clause (b) of rule 21, the Chairman of the Ethics Committee and the head of the institution where the trial has been conducted, within fourteen days of the occurrence of the serious adverse event.]

<sup>96</sup>[(v)] In case of injury or death occurring to the clinical trial subject, the sponsor (whether a pharmaceutical company or an institution) or his representative, whosoever had obtained permission from the licensing authority for conduct of the clinical trial, shall make payment for medical management of the subject and also provide financial compensation for the clinical trial related injury or death in the manner as prescribed in Appendix XII;

(vi) the sponsor (whether a pharmaceutical company or an institution) or his representative, whosoever had obtained permission from the licensing authority for conduct of the clinical trial, shall submit details of compensation provided or paid for clinical trial related injury or death, to the licensing authority within thirty days of the receipt of the order of the licensing authority.]

<sup>97</sup>[(3)(i)] *Responsibilities of the Investigator(s).*—The investigator(s) shall be responsible for the conduct of the trial according to the protocol and the GCP Guidelines and also for compliance as per the undertaking given in Appendix VII. Standard operating procedures are required to be documented by the investigators for the tasks performed by them. During and following a subject's participation in a trial, the investigator should ensure that adequate medical care is provided to the participant for any adverse events. Investigator(s) shall report all serious and unexpected adverse events to the <sup>97a</sup>[licensing authority defined under clause (b) of rule 21, the sponsor or his representative, whosoever had obtained permission from the licensing authority for conduct of the clinical trial, and the Ethics Committee that accorded approval to the study protocol, within twenty four hours of their occurrence. <sup>98</sup>]In case, the Investigator fails to report any serious adverse event within the stipulated period, he shall have to furnish the reason for the delay to the satisfaction of the Licensing Authority along with the report of the serious adverse event. The report of the serious adverse event, after due analysis, shall be forwarded by the Investigator to the Licensing Authority as referred to in clause (b) of rule 21, the Chairman of the Ethics Committee and the Head of the institution where the trial has been conducted within fourteen days of the occurrence of the serious adverse event.]

<sup>99</sup>[(ii)] The investigator shall provide information to the clinical trial subject through informed consent process as provided in Appendix V about the essential elements of the clinical trial and the subject's right to claim compensation in case of trial related injury or death. He shall also inform the subject or his/her nominee(s) of their rights to contract the Sponsor or his representative whosoever had obtained permission from the licensing authority for conduct of the clinical trial for the purpose of making claims in the case of trial related injury or death.]

(4) *Informed Consent.*—(i) In all trials, a freely given, informed, written consent is required to be obtained from each study subject. The investigator must provide information about the study verbally as well as using a patient information sheet, in a language that is non-technical and understandable by the study subject. The subject's consent must be obtained in writing using an "Informed Consent Form". Both the patient information sheet as well as the Informed Consent Form should have been approved by the Ethics Committee and furnished to the Licensing Authority. Any changes in the informed consent documents should be approved by the Ethics Committee and submitted to the Licensing Authority before such changes are implemented.

95. Substituted by G.S.R. 889(E), dated 12-12-2014 (w.e.f. 12-6-2015).

96. Inserted by G.S.R. 53(E), dated 30-1-2013 (w.e.f. 30-1-2013).

97. Renumbered by G.S.R. 53(E), dated 30-1-2013 (w.e.f. 30-1-2013).

97a. Substituted G.S.R. 53(E), dated 30-1-2013 (w.e.f. 30-1-2013).

(ii) Where a subject is not able to give informed consent (e.g., an unconscious person or a minor or those suffering from severe mental illness or disability), the same may be obtained from a legally acceptable representative [a legally acceptable representative is a person who is able to give consent for or authorise an intervention in the patient as provided by the law(s) of India]. If the subject or his/her legally acceptable representative is unable to read/write—an impartial witness should be present during the entire informed consent process who must append his/her signatures to the consent form.

(iii) A checklist of essential elements to be included in the study subject's informed consent document as well as a format for the Informed Consent Form for study subjects is given in Appendix V.

(5) *Responsibilities of the Ethics Committee*—(i) It is the responsibility of the Ethics Committee that reviews and accords its approval to a trial protocol to safeguard the rights, safety and well being of all trial subjects. The Ethics Committee should exercise particular care to protect the rights, safety and well being of all vulnerable subjects participating in the study, e.g., members of a group with hierarchical structure (e.g., prisoners, armed forces personnel, staff and students of medical, nursing and pharmacy academic institutions), patients with incurable diseases, unemployed or impoverished persons, patients in emergency situation, ethnic minority groups, homeless persons, nomads, refugees, minors or others incapable of personally giving consent. Ethics Committee(s) should get document "standard operating procedures" and should maintain a record of its proceedings.

(ii) Ethics Committee(s) should make, at appropriate intervals, an ongoing review of the trials for which they review the protocol(s). Such a review may be based on the periodic study progress reports furnished by the investigators and/or monitoring and internal audit reports furnished by the sponsor and/or by visiting the study sites.

(iii) In case an ethics committee revokes its approval accorded to a trial protocol, it must record the reasons for doing so and at once communicate such a decision to the Investigator as well as to the Licensing Authority.

<sup>98</sup>[(iv) In case of serious adverse event occurring to the clinical trial subject, the Ethics Committee shall forward its report on the serious adverse event, after due analysis, along with its opinion on the financial compensation, if any, to be paid by the Sponsor or his representative, whosoever had obtained permission from the Licensing Authority as referred to in clause (b) of rule 21 for conducting the clinical trial, to the Licensing Authority within thirty days of the occurrence of the serious adverse event.]

<sup>98a</sup>[5-A. *Serious adverse events*.—(1) A serious adverse event is an untoward medical occurrence during clinical trial that is associated with death, in patient hospitalisation (in case the study was being conducted on out-patient), prolongation of hospitalisation (in case the study was being conducted on in-patient), persistent or significant disability or incapacity, a congenital anomaly or birth defect or is otherwise life threatening.

(2) The investigator shall report all serious <sup>98b</sup>[\* \* \*] adverse events to the licensing authority as defined under clause (b) of rule 21, the sponsor or his representative, whosoever had obtained permission from the licensing authority for conduct of the clinical trial, and the Ethics Committee that accorded approval to the study protocol, within twenty four hours of their occurrence as per Appendix XI, and the said licensing authority shall determine the cause of injury or death as per the procedure prescribed under Appendix XII and pass orders as deemed necessary. <sup>98c</sup>[In case, the Investigator fails to report any serious adverse event within the stipulated period, he shall have to furnish the reason for the delay to the satisfaction of the Licensing Authority along with the report of the serious adverse event.]

(6) *Human Pharmacology (Phase I)*.—(i) The objective of studies in this phase is the estimation of safety and tolerability with the initial administration of an investigational new drug into human(s). Studies in this phase of development usually have non-therapeutic objectives and may be conducted in healthy volunteers subjects or certain types of patients. Drugs with significant potential toxicity, e.g., cytotoxic drugs are usually studied in patients.

98. Substituted by G.S.R. 889(E), dated 12-12-2014 (w.e.f. 12-6-2015).

98a. Inserted by G.S.R. 53(E), dated 30-1-2013 (w.e.f. 30-1-2013).

98b. Omitted by G.S.R. 889(E), dated 12-12-2014 (w.e.f. 12-6-2015).

98c. Inserted by G.S.R. 889(E), dated 12-12-2014 (w.e.f. 12-6-2015).

1.5 Timing of Safety Pharmacology Studies in relation to Clinical Development

1.5.1 Prior to First Administration in Humans

The effects of an investigational drug on the vital functions listed in the essential safety pharmacology should be studied prior to first administration in humans. Any follow-up or supplemental studies identified, should be conducted if necessary, based on a cause for concern.

1.5.2 During Clinical Development

Additional investigations may be warranted to clarify observed or suspected adverse effects in animals and humans during clinical development.

1.5.3 Before applying for marketing approval

Follow-up, and supplemental safety pharmacology studies should be assessed prior to approval unless not required, in which case this should be justified. Available information from toxicology studies addressing safety pharmacology endpoints or information from clinical studies can replace such studies.

1.6 Application of Good Laboratory Practices (G.L.P)

The animal studies be conducted in an accredited laboratory. Where the safety pharmacology studies are part of toxicology studies, these studies should also be conducted in an accredited laboratory.

APPENDIX V

INFORMED CONSENT

1. Checklist for study subject's informed consent documents--

1.1 Essential Elements:

1. Statement that the study involves research and explanation of the purpose of the research.
2. Expected duration of the subject's participation.
3. Description of the procedures to be followed, including all invasive procedures.
4. Description of any reasonably foreseeable risks or discomforts to the subject.
5. Description of any benefits to the subject or others reasonably expected from research. If no benefit is expected subject should be made aware of this.

6. Disclosure of specific appropriate alternative procedures or therapies available to the subject.

7. Statement describing the extent to which confidentiality of records identifying the subject will be maintained and who will have access to subject's medical records.

8. Trial treatment schedule(s) and the probability for random assignment to each treatment (for randomised trials).

<sup>99</sup>[9. Statement describing the financial compensation and medical management as under:—

<sup>99a</sup>[(a) In case of an injury occurring to the subject during the clinical trial, free medical management shall be given as long as required or till such time it is established that the injury is not related to the clinical trial, whichever is earlier.]

(b) In the event of a trial related injury or death, the sponsor or his representative, whosoever has obtained permission from the licensing authority for conduct of the clinical trial shall provide financial compensation for the injury or death.]

10. An explanation about whom to contact for trial related queries, rights of subjects and in the event of any injury.

11. The anticipated prorated payment, if any, to the subject for participating in the trial.

12. Subject's responsibilities on participation in the trial.

13. Statement that participation is voluntary, that the subject can withdraw from the study at any time and that refusal to participate will not involve any penalty or loss of benefits to which the subject is otherwise entitled.

14. Any other pertinent information.

<sup>99</sup>. Substituted by G.S.R. 53(E), dated 30-1-2013 (w.e.f. 30-1-2013).

<sup>99a</sup>. Substituted by G.S.R. 889(E), dated 12-12-2014 (w.e.f. 12-6-2015).

## 1.2 Additional elements, which may be required;

(a) Statement of foreseeable circumstances under which the subject's participation may be terminated by the Investigator without the subject's consent.

(b) Additional costs to the subject that may result from participation in the study.

(c) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by subject.

(d) Statement that the subject or subject's representative will be notified in a timely manner if significant new findings develop during the course of the research which may affect the subject's willingness to continue participation will be provided.

(e) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or foetus, if the subject is or may become pregnant), which are currently unforeseeable.

(f) Approximate number of subjects enrolled in the study.

## 2. Format of informed consent form for subjects participating in a clinical trial—

Informed Consent form to participate in a clinical trial

Study Title:

Study Number:

Subject's Initials:.....

Subject's Name:.....

Date of Birth/Age:.....

[Address of the subject:.....

Qualification:.....

Occupation: Student/Self-Employed/Service/  
Housewife/Others (Please tick as appropriate)

Annual Income of the subject:.....

Name and address of the nominee(s) and his relation to the  
subject.....(for the purpose of compensation in case of trial related death).]

Please initial  
box (Subject)

(i) I confirm that I have read and understood the information sheet dated..... [ ]  
for the above study and have had the opportunity to ask questions

(ii) I understand that my participation in the study is voluntary and that [ ]  
I am free to withdraw at any time, without giving any reason, without  
my medical care or legal rights being affected.

(iii) I understand that the sponsor of the clinical trial, others working on [ ]  
the sponsor's behalf, the Ethics Committee and the regulatory authorities  
will not need my permission to look at my health records both in respect  
of the current study and any further research that may be conducted in  
relation to it, event if I withdraw from the trial. I agree to this access.  
However, I understand that my identity will not be revealed in any  
information released to third parties or published.

(iv) I agree not to restrict the use of any data or results that arise from this [ ]  
study provided such a use is only for scientific purpose(s).

(v) I agree to take part in the above study. [ ]

Signature (or Thumb-impression) of the Subject/Legally Acceptable Representative:

Date: ...../...../.....

Signatory's

Name:

Signature of the Investigator: .....

Date: ...../...../.....

Study

Investigator's

Name:

1. Inserted by G.S.R. 53(E), dated 30-1-2013 (w.e.f. 30-1-2013).

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Signature of the Witness.....

Date: ...../...../.....

Name of the Witness:

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<sup>2</sup>[(Copy of the Patient Information Sheet and duly filled informed Consent Form shall be handed over to the subject or his/her attendant).]

## APPENDIX VI

## FIXED DOSE COMBINATIONS (FDCs)

Fixed Dose Combinations refer to products containing one or more active ingredients used for a particular indication(s). FDCs can be divided into the following groups and data required for approval for marketing is described below:

(a) The first group of FDCs includes those in which one or more of the active ingredients is a new drug. For such FDCs to be approved for marketing data to be submitted will be similar to data required for any new drug (including clinical trials) [See rule 122-E, item (a)].

(b)(i) The second group FDCs includes those in which active ingredients already approved/marketed individually are combined for the first time, for a particular claim and where the ingredients are likely to have significant interaction of a pharmacodynamic or pharmacokinetic nature [See rule 122-E, item (c)]. If clinical trials have been carried out with the FDC in other countries, reports of such trials should be submitted. If the FDC is marketed abroad, the regulatory status in other countries should be stated (See Appendix I, Item 9).

(ii) For marketing permission, appropriate chemical and pharmaceutical data will be submitted. In case such a combination is not marketed anywhere in the world but these drugs are already in use concomitantly (not as an FDC but individually) for the said claim, marketing permission may be granted based on chemical and pharmaceutical data. Data showing the stability of the proposed dosage form will also have to be submitted.

(iii) For any other such FDCs, clinical trials may be required. For obtaining permission to carry out clinical trials with such FDCs a summary of available pharmacological, toxicological and clinical data on the individual ingredients should be submitted, along with the rationale for combining them in the proposed ratio. In addition, acute toxicity data (LD 50) and pharmacological data should be submitted on the individual ingredients as well as their combination in the proposed ratio.

(c) The third group of FDCs includes those which are already marketed, but in which it is proposed either to change the ratio of active ingredients or to make a new therapeutic claim. For such FDCs, the appropriate rational including published reports (if any) should be submitted to obtain marketing permission. Permission will be granted depending upon the nature of the claim and data submitted.

(d) The fourth group of FDCs includes those whose individual active ingredients (or drugs from the same class) have been widely used in a particular indication(s) for years, their concomitant use is often necessary and no claim is proposed to be made other than convenience. It will have to be demonstrated that the proposed dosage form is stable and the ingredients are unlikely to have significant interaction of a pharmacodynamic or pharmacokinetic nature.

No additional animal or human data are generally required for these FDCs, and marketing permission may be granted if the FDC has an acceptable rationale.

## APPENDIX VII

## UNDERTAKING BY THE INVESTIGATOR

1. Full name, address and title of the Principal Investigator [or Investigator(s) when there is no Principal Investigator].
2. Name and address of the medical college, hospital or other facility where the clinical trial will be conducted: Education, training and experience that qualify the Investigator for the clinical trial [Attach details including Medical Council registration number, and/or any other statement(s) of qualification(s)].

2. Inserted by G.S.R. 53(E), dated 30-1-2013 (w.e.f. 30-1-2013).



# The Indian Evidence Act, 1872

(1 of 1872)

*as amended by*

The Criminal Law (Amendment) Act, 2005  
(2 of 2006)

*with*

STATE AMENDMENTS

*along with*

Prescribed Forms of Evidence  
under The Code of Criminal Procedure, 1973



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65. Cases in which secondary evidence relating to documents may be given.—Secondary evidence may be given of the existence, condition, or contents of a document in the following cases:—

- (a) When the original is shown or appears to be in the possession or power—  
of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or  
of any person legally bound to produce it,  
and when, after the notice mentioned in section 66, such person does not produce it;
- (b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;
- (c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;
- (d) when the original is of such a nature as not to be easily movable;
- (e) when the original is a public document within the meaning of section 74;
- (f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in <sup>1</sup>[India] to be given in evidence<sup>2</sup>;
- (g) when the original consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.

#### COMMENTS

**When attesting witness not necessary**

In case the document is registered then except in the case of a will it is not necessary to call an attesting witness, unless the execution has been specifically denied by the person by whom it purports to have been executed; *Ishwar Dass Jain (dead) through L.R. v. Sohanlal (dead) by LRs*, AIR 2000 SC 426.

<sup>3</sup>[65A. Special provisions as to evidence relating to electronic record.—The contents of electronic records may be proved in accordance with the provisions of section 65B.

**65B. Admissibility of electronic records.**—(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is

1. Subs. by Act 3 of 1951, sec. 3 and Sch., for "the States".

2. Cf. the Bankers' Books Evidence Act, 1891 (18 of 1891), section 4.

3. Ins. by Act 21 of 2000, sec. 92 and Sch. II (w.e.f. 17-10-2000).

printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;
- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and
- (d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

- (a) by a combination of computers operating over that period; or
- (b) by different computers operating in succession over that period; or
- (c) by different combinations of computers operating in succession over that period; or
- (d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—

- (a) identifying the electronic record containing the statement and describing the manner in which it was produced;
- (b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;
- (c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

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and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section,—

- (a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;
- (b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;
- (c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

*Explanation.*—For the purposes of this section any reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

66. Rules as to notice to produce.—Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, <sup>1</sup>[or to his attorney or pleader,] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:—

- (1) when the document to be proved is itself a notice;
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
- (4) when the adverse party or his agent has the original in Court;
- (5) when the adverse party or his agent has admitted the loss of the document;
- (6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.

67. Proof of signature and handwriting of person alleged to have signed or written document produced.—If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in his handwriting.

1. Ins. by Act 18 of 1872, sec. 6.

# The Information Technology Act, 2000.

(21 of 2000)

*with Schedules  
as amended in 2015*

*along with*

- The Information Technology (Certifying Authorities) Rules, 2000 *as amended by (Amendment) Rules, 2015*
  - The Cyber Regulations Appellate Tribunal (Procedure) Rules, 2000
  - List of Chairman and Members of Cyber Regulation Advisory Committee
  - The Information Technology (Certifying Authority) Regulations, 2001
  - The Information Technology (Other Powers of Civil Court Vested in Cyber Appellate Tribunal) Rules, 2003
  - The Information Technology (Other Standards) Rules, 2003
  - The Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003
  - The Information Technology (Use of Electronic Records and Digital Signatures) Rules, 2004
  - The Information Technology (Security Procedure) Rules, 2004
  - The Cyber Appellate Tribunal (Salary, Allowances and Other Terms and Conditions of Service of Chairperson and Members) Rules, 2009
  - The Cyber Appellate Tribunal (Procedure for Investigation of Misbehaviour or Incapacity of Chairperson and Members) Rules, 2009
  - The Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009
- and much more...(see detailed Contents inside)*

*along with*

**SHORT NOTES**

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**NEW DELHI - INDIA**

# THE INFORMATION TECHNOLOGY ACT, 2000

## INTRODUCTION

Digital technology and new communication systems have made dramatic changes in our lives. Business transactions are being made with the help of computers. Business community as well as individuals are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form is cheaper. It is easier to store, retrieve and speedier to communicate. People are aware of these advantages but they are reluctant to conduct business or conclude transactions in the electronic form due to lack of legal framework. At present many legal provisions recognise paper based records and documents which should bear signatures. Since electronic commerce eliminates the need for paper based transactions, therefore, to facilitate e-commerce, there is a need for legal changes. The United Nations Commission on International Trade Law adopted the Model Law on Electronic Commerce in 1996. India being signatory to it has to revise its laws as per the said Model Law. Keeping in view the urgent need to bring suitable amendments in the existing laws to facilitate e-commerce and with a view to facilitate Electronic Governance, the Information and Technology Bill was introduced in the Parliament.

## STATEMENT OF OBJECTS AND REASONS

New communication systems and digital technology have made dramatic changes in the way we live. A revolution is occurring in the way people transact business. Businesses and consumers are increasingly using computers to create, transmit and store information in the electronic form instead of traditional paper documents. Information stored in electronic form has many advantages. It is cheaper, easier to store, retrieve and speedier to communicate. Although people are aware of these advantages, they are reluctant to conduct business or conclude any transaction in the electronic form due to lack of appropriate legal framework. The two principal hurdles which stand in the way of facilitating electronic commerce and electronic governance are the requirements as to writing and signature for legal recognition. At present many legal provisions assume the existence of paper based records and documents and records which should bear signatures. The Law of Evidence is traditionally based upon paper based records and oral testimony. Since electronic commerce eliminates the need for paper based transactions, hence to facilitate e-commerce, the need for legal changes have become an urgent necessity. International trade through the medium of e-commerce is growing rapidly in the past few years and many countries have switched over from traditional paper based commerce to e-commerce.

2. The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law on Electronic Commerce in 1996. The General Assembly of United Nations by its Resolution No. 51/162, dated 30th January, 1997, recommended that all States should give favourable considerations to the said Model Law when they enact or revise their laws. The

Model Law provides for equal legal treatment of users of electronic communication and paper based communication. Pursuant to a recent declaration by member countries, the World Trade Organisation is likely to form a work programme to handle its work in this area including the possible creation of multilateral trade deals through the medium of electronic commerce.

3. There is a need for bringing in suitable amendments in the existing laws in our country to facilitate e-commerce. It is, therefore, proposed to provide for legal recognition of electronic records and digital signatures. This will enable the conclusion of contracts and the creation of rights and obligations through the electronic medium. It is also proposed to provide for a regulatory regime to supervise the Certifying Authorities issuing Digital Signature Certificates. To prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium, it is also proposed to create civil and criminal liabilities for contravention of the provisions of the proposed legislation.

4. With a view to facilitate Electronic Governance, it is proposed to provide for the use and acceptance of electronic records and digital signatures in the Government offices and its agencies. This will make the citizens interaction with the Governmental offices hassle free.

5. It is also proposed to make consequential amendments in the Indian Penal Code and the Indian Evidence Act, 1872 to provide for necessary changes in the various provisions which deal with offences relating to documents and paper based transactions. It is also proposed to amend the Reserve Bank of India Act, 1934 to facilitate electronic fund transfers between the financial institutions and banks and the Bankers' Books Evidence Act, 1891 to give legal sanctity for books of account maintained in the electronic form by the banks.

6. The proposal was also circulated to the State Governments. They have supported the proposed legislation and have also expressed urgency for such legislation.

7. The Bill seeks to achieve the above objectives.

#### ACT 21 OF 2000

The Information Technology Bill having been passed by both the Houses of Parliament, received the assent of the President on 9th June, 2000. It came on the Statute Book as THE INFORMATION TECHNOLOGY ACT, 2000 (21 of 2000) (Came into force on 17-10-2000).

#### AMENDING ACTS

1. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (55 of 2002) (w.e.f. 6-2-2003).
2. The Information Technology (Amendment) Act, 2008 (10 of 2009) (w.e.f. 27-10-2009).

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# THE INFORMATION TECHNOLOGY ACT, 2000

(21 of 2000)

[9th June, 2000]

*An Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1872, the Banker's Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto;*

WHEREAS the General Assembly of the United Nations by resolution A/RES/51/162, dated 30th January, 1997 has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law;

AND WHEREAS the said resolution recommends, *inter alia*, that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage of information;

AND WHEREAS it is considered necessary to give effect to the said resolution and to promote efficient delivery of Government services by means of reliable electronic records;

BE it enacted by Parliament in the Fifty-first Year of the Republic of India as follows:—

## CHAPTER I PRELIMINARY

1. Short title, extent, commencement and application.—(1) This Act may be called the Information Technology Act, 2000.

(2) It shall extend to the whole of India and, save as otherwise provided in this Act, it applies also to any offence or contravention thereunder committed outside India by any person.

(3) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

<sup>2</sup>[(4) Nothing in this Act shall apply to documents or transactions specified in the First Schedule:

1. Came into force on 17-10-2000 *vide* G.S.R. 788(E), dated 17th October, 2000.

2. Subs. by Act 10 of 2009, sec. 3, for sub-section (4) (w.e.f. 27-10-2009). Sub-section (4), before substitution, stood as under:

"(4) Nothing in this Act shall apply to—

(a) a negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881);

computer system or computer network or computer resource; (ii) downloads, copies or extracts any data, computer data-base or information; (iii) introduces or causes to be introduced any computer contaminant or computer virus; (iv) damages or causes to be damaged any computer, computer system or computer network data, computer database or any other programmes; (v) disrupts or causes disruption; (vi) denies or causes the denial of access to any person authorised to access; (vii) provides any assistance to any person to facilitate access in contravention of the provisions of this Act; (viii) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system or computer network; destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means; (x) steal, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code with intention to cause damage; he shall be liable to pay damages by way of compensation to the person so affected.

<sup>1</sup>[43A. Compensation for failure to protect data.—Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.

*Explanation.*—For the purposes of this section,—

- (i) "body corporate" means any company and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities;
- (ii) "reasonable security practices and procedures" means security practices and procedures designed to protect such information from unauthorised access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit;
- (iii) "sensitive personal data or information" means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.]

44. Penalty for failure to furnish information, return, etc.—If any person who is required under this Act or any rules or regulations made thereunder to—

- (a) furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;
- (b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations fails to file return or furnish the same within the time specified therefor in the

1. Ins. by Act 10 of 2009, sec. 22 (w.e.f. 27-10-2009).



*Explanation.*—For the purpose of this section, terms “electronic mail” and “electronic mail message” means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message.

**66B. Punishment for dishonestly receiving stolen computer resource or communication device.**—Whoever dishonestly received or retains any stolen computer resource or communication device knowing or having reason to believe the same to be stolen computer resource or communication device, shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to rupees one lakh or with both.

**66C. Punishment for identity theft.**—Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to rupees one lakh.

**66D. Punishment for cheating by personation by using computer resource.**—Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

**66E. Punishment for violation of privacy.**—Whoever, intentionally or knowingly captures, publishes or transmits the image of a private area of any person without his or her consent, under circumstances violating the privacy of that person, shall be punished with imprisonment which may extend to three years or with fine not exceeding two lakh rupees, or with both.

*Explanation.*—For the purposes of this section—

- (a) “transmit” means to electronically send a visual image with the intent that it be viewed by a person or persons;
- (b) “capture”, with respect to an image, means to videotape, photograph, film or record by any means;
- (c) “private area” means the naked or undergarment clad genitals, pubic area, buttocks or female breast;
- (d) “publishes” means reproduction in the printed or electronic form and making it available for public;

*Contd. from previous page*

**67. Publishing of information which is obscene in electronic form.**—Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.”

- (e) "under circumstances violating privacy" means circumstances in which a person can have a reasonable expectation that;—
- (i) he or she could disrobe in privacy, without being concerned that an image of his private area was being captured; or
  - (ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

**66F. Punishment for cyber terrorism.—(1) Whoever,—**

- (A) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people by—
- (i) denying or cause the denial of access to any person authorized to access computer resource; or
  - (ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or
  - (iii) introducing or causing to introduce any computer contaminant; and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure specified under section 70 or
- (B) knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons of the security of the State or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise,
- commits the offence of cyber terrorism.

(2) Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life.'

**67. Punishment for publishing or transmitting obscene material in electronic form.—**Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

*Explanation.*—For the purposes of this section,—

- (i) "company" means any body corporate and includes a firm or other association of individuals; and
- (ii) "director", in relation to a firm, means a partner in the firm.

**86. Removal of difficulties.**—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**87. Power of Central Government to make rules.**—(1) The Central Government may, by notification in the Official Gazette and in the Electronic Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- <sup>1</sup>[(a) the conditions for considering reliability of electronic signature or electronic authentication technique under sub-section (2) of section 3A;]
- <sup>1</sup>[(aa) the procedure for ascertaining electronic signature or authentication under sub-section (3) of section 3A;]
- <sup>1</sup>[(ab) the manner in which any information or matter may be authenticated by means of electronic signature under section 5;]
- (b) the electronic form in which filing, issue, grant or payment shall be effected under sub-section (1) of section 6;
- (c) the manner and format in which electronic records shall be filed, or issued and the method of payment under sub-section (2) of section 6;

1. Subs. by Act 10 of 2009, sec. 46(A)(i), for clause (a) (w.e.f. 27-10-2009). Clause (a), before substitution, stood as under:

"(a) the manner in which any information or matter may be authenticated by means of digital signature under section 5;"

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- <sup>1</sup>[(ca) the manner in which the authorised service provider may collect, retain and appropriate service charges under sub-section (2) of section 6A;]
- (d) the matters relating to the type of <sup>2</sup>[electronic signature], manner and format in which it may be affixed under section 10;
- <sup>3</sup>[(e) the manner of storing and affixing electronic signature creation data under section 15;]
- <sup>3</sup>[(ea) the security procedures and practices under section 16;]
- (f) the qualifications, experience and terms and conditions of service of Controller, Deputy Controllers <sup>4</sup>[, Assistant Controllers, other officers and employees] under section 17;
- <sup>5</sup>[\*\*\*]
- (h) the requirements which an applicant must fulfil under sub-section (2) of section 21;
- (i) the period of validity of licence granted under clause (a) of sub-section (3) of section 21;
- (j) the form in which an application for licence may be made under sub-section (1) of section 22;
- (k) the amount of fees payable under clause (c) of sub-section (2) of section 22;
- (l) such other documents which shall accompany an application for licence under clause (d) of sub-section (2) of section 22;
- (m) the form and the fee for renewal of a licence and the fee payable thereof under section 23;
- <sup>6</sup>[(ma) the form of application and fee for issue of Electronic Signature Certificate under section 35;]
- (n) the form in which application for issue of a <sup>7</sup>[Electronic Signature] Certificate may be made under sub-section (1) of section 35;
- (o) the fee to be paid to the Certifying Authority for issue of a <sup>7</sup>[Electronic Signature] Certificate under sub-section (2) of section 35;
- <sup>8</sup>[(oa) the duties of subscribers under section 40A;]

1. Ins. by Act 10 of 2009, sec. 46(A)(ii) (w.e.f. 27-10-2009).

2. Subs. by Act 10 of 2009, sec. 2, for "digital signature" (w.e.f. 27-10-2009).

3. Subs. by Act 10 of 2009, sec. 46(A)(iii), for clause (e) (w.e.f. 27-10-2009). Clause (e), before substitution, stood as under:

"(e) the security procedure for the purpose of creating secure electronic record and secure digital signature under section 16;"

4. Subs. by Act 10 of 2009, sec. 46(A)(iv), for "and Assistant Controller" (w.e.f. 27-10-2009).

5. Clause (g) omitted by Act 10 of 2009, sec. 46(A)(v) (w.e.f. 27-10-2009). Clause (g), before omission, stood as under:

"(g) other standards to be observed by the Controller under clause (b) of sub-section (2) of section 20;"

6. Ins. by Act 10 of 2009, sec. 46(A)(vi) (w.e.f. 27-10-2009).

7. Subs. by Act 10 of 2009, sec. 2, for "Digital Signature" (w.e.f. 27-10-2009).

8. Ins. by Act 10 of 2009, sec. 46(A)(vii) (w.e.f. 27-10-2009).

- <sup>1</sup>[(ob) the reasonable security practices and procedures and sensitive personal data or information under section 43A;]
- (p) the manner in which the adjudicating officer shall hold inquiry under sub-section (1) of section 46;
- (q) the qualification and experience which the adjudicating officer shall possess under sub-section (3) of section 46;
- (r) the salary, allowances and the other terms and conditions of service of the <sup>2</sup>[Chairperson and Members] under section 52;
- (s) the procedure for investigation of misbehaviour or incapacity of the <sup>3</sup>[Chairperson and Members] under sub-section (3) of section 54;
- (t) the salary and allowances and other conditions of service of other officers and employees under sub-section (3) of section 56;
- (u) the form in which appeal may be filed and the fee thereof under sub-section (3) of section 57;
- (v) any other power of a civil court required to be prescribed under clause (g) of sub-section (2) of section 58; and
- <sup>4</sup>[(w) the powers and functions of the Chairperson of the Cyber Appellate Tribunal under section 52A;]
- <sup>4</sup>[(x) the information, duration, manner and form of such information to be retained and preserved under section 67C;]
- <sup>4</sup>[(y) the procedures and safeguards and interception, monitoring, or decryption under sub-section (2) of section 69;]
- <sup>4</sup>[(z) the procedure and safeguards for blocking for access by the public under sub-section (2) of section 69A;]
- <sup>4</sup>[(za) the procedure and safeguards for monitoring and collecting traffic data or information under sub-section (3) of section 69B;]
- <sup>4</sup>[(zb) the information security practices and procedures for protected system under section 70;]
- <sup>4</sup>[(zc) manner of performing functions and duties of the agency under sub-section (3) of section 70A;]
- <sup>4</sup>[(zd) the officers and employees under sub-section (2) of section 70B;]
- <sup>4</sup>[(ze) salaries and allowances and terms and conditions of service of the Director-General and other officers and employees under sub-section (3) of section 70B;]

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1. Ins. by Act 10 of 2009, sec. 46(A)(vii) (w.e.f. 27-10-2009).
2. Subs. by Act 10 of 2009, sec. 46(A)(viii), for "Presiding Officer" (w.e.f. 27-10-2009).
3. Subs. by Act 10 of 2009, sec. 46(A)(viii), for "Presiding Officer" (w.e.f. 27-10-2009).
4. Subs. by Act 10 of 2009, sec. 46(A)(ix), for clause (w) (w.e.f. 27-10-2009). Clause (w), before substitution, stood as under:  
 "(w) any other matter which is required to be, or may be, prescribed."

<sup>1</sup>[(zf) the manner in which the functions and duties of agency shall be performed under sub-section (5) of section 70B;]

<sup>1</sup>[(zg) the guidelines to be observed by the intermediaries under sub-section (2) of section 79;]

<sup>1</sup>[(zh) the modes or methods for encryption under section 84A.]

(3) <sup>2</sup>[Every notification made by the Central Government under sub-section (1) of section 70A and every rule made by it] shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in <sup>3</sup>[\*\*\*] the rule or both Houses agree that <sup>3</sup>[\*\*\*] the rule should not be made, <sup>3</sup>[\*\*\*] the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

88. Constitution of Advisory Committee.—(1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Cyber Regulations Advisory Committee.

(2) The Cyber Regulations Advisory Committee shall consist of a Chairperson and such number of other official and non-official members representing the interests principally affected or having special knowledge of the subject-matter as the Central Government may deem fit.

(3) The Cyber Regulations Advisory Committee shall advise—

(a) the Central Government either generally as regards any rules or for any other purpose connected with this Act;

(b) the Controller in framing the regulations under this Act.

(4) There shall be paid to the non-official members of such Committee such travelling and other allowances as the Central Government may fix.

89. Power of Controller to make regulations.—(1) The Controller may, after consultation with the Cyber Regulations Advisory Committee and with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

1. Subs. by Act 10 of 2009, sec. 46(A)(ix), for clause (w) (w.e.f. 27-10-2009).

2. Subs. by Act 10 of 2009, sec. 46(B)(i), for "Every notification made by the Central Government under clause (f) of sub-section (4) of section 1 and every rule made by it" (w.e.f. 27-10-2009).

3. The words "the notification or" omitted by Act 10 of 2009, sec. 46(B)(ii) (w.e.f. 27-10-2009).

## THE INFORMATION TECHNOLOGY (REASONABLE SECURITY PRACTICES AND PROCEDURES AND SENSITIVE PERSONAL DATA OR INFORMATION) RULES, 2011<sup>1</sup>

*In exercise of the powers conferred by clause (ob) of sub-section (2) of section 87 read with section 43A of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules, namely:—*

1. **Short title and commencement.**—(1) These rules may be called the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011.

(2) They shall come into force on the date<sup>2</sup> of their publication in the Official Gazette.

2. **Definitions.**—(1) In these rules, unless the context otherwise requires,—

- (a) "Act" means the Information Technology Act, 2000 (21 of 2000);
- (b) "Biometrics" means the technologies that measure and analyse human body characteristics, such as 'fingerprints', 'eye retinas and irises', 'voice patterns', 'facial patterns', 'hand measurements' and 'DNA' for authentication purposes;
- (c) "Body corporate" means the body corporate as defined in clause (i) of explanation to section 43A of the Act;
- (d) "Cyber incidents" means any real or suspected adverse event in relation to cyber security that violates an explicitly or implicitly applicable security policy resulting in unauthorised access, denial of service or disruption, unauthorised use of a computer resource for processing or storage of information or changes to data, information without authorisation;
- (e) "Data" means data as defined in clause (o) of sub-section (1) of section 2 of the Act;
- (f) "Information" means information as defined in clause (v) of sub-section (1) of section 2 of the Act;
- (g) "Intermediary" means an intermediary as defined in clause (w) of sub-section (1) of section 2 of the Act;
- (h) "Password" means a secret word or phrase or code or passphrase or secret key, or encryption or decryption keys that one uses to gain admittance or access to information;

1. *Vide* G.S.R. 313(E), dated 11th April, 2011 published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 13th April, 2011.

2. Came into force on 13-4-2011.

- (i) "Personal information" means any information that relates to a natural person, which, either directly or indirectly, in combination with other information available or likely to be available with a body corporate, is capable of identifying such person.

(2) All other words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Sensitive personal data or information.—Sensitive personal data or information of a person means such personal information which consists of information relating to:—

- (i) password;
- (ii) financial information such as Bank account or credit card or debit card or other payment instrument details;
- (iii) physical, physiological and mental health condition;
- (iv) sexual orientation;
- (v) medical records and history;
- (vi) Biometric information;
- (vii) any detail relating to the above clauses as provided to body corporate for providing service; and
- (viii) any of the information received under above clauses by body corporate for processing, stored or processed under lawful contract or otherwise:

Provided that, any information that is freely available or accessible in public domain or furnished under the Right to Information Act, 2005 or any other law for the time being in force shall not be regarded as sensitive personal data or information for the purposes of these rules.

4. Body corporate to provide policy for privacy and disclosure of information.—(1) The body corporate or any person who on behalf of body corporate collects, receives, possess, stores, deals or handle information of provider of information, shall provide a privacy policy for handling of or dealing in personal information including sensitive personal data or information and ensure that the same are available for view by such providers of information who has provided such information under lawful contract. Such policy shall be published on website of body corporate or any person on its behalf and shall provide for—

- (i) clear and easily accessible statements of its practices and policies;
- (ii) type of personal or sensitive personal data or information collected under rule 3;
- (iii) purpose of collection and usage of such information;
- (iv) disclosure of information including sensitive personal data or information as provided in rule 6;
- (v) reasonable security practices and procedures as provided under rule 8.

5. Collection of information.—(1) Body corporate or any person on its behalf shall obtain consent in writing through letter or fax or email from the provider of



Rule 5] *The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal data or Information) Rules, 2011*

the sensitive personal data or information regarding purpose of usage before collection of such information.

(2) Body corporate or any person on its behalf shall not collect sensitive personal data or information unless—

- (a) the information is collected for a lawful purpose connected with a function or activity of the body corporate or any person on its behalf; and
- (b) the collection of the sensitive personal data or information is considered necessary for that purpose.

(3) While collecting information directly from the person concerned, the body corporate or any person on its behalf shall take such steps as are, in the circumstances, reasonable to ensure that the person concerned is having the knowledge of —

- (a) the fact that the information is being collected;
- (b) the purpose for which the information is being collected;
- (c) the intended recipients of the information; and
- (d) the name and address of —
  - (i) the agency that is collecting the information; and
  - (ii) the agency that will retain the information.

(4) Body corporate or any person on its behalf holding sensitive personal data or information shall not retain that information for longer than is required for the purposes for which the information may lawfully be used or is otherwise required under any other law for the time being in force..

(5) The information collected shall be used for the purpose for which it has been collected.

(6) Body corporate or any person on its behalf shall permit the providers of information, as and when requested by them, to review the information they had provided and ensure that any personal information or sensitive personal data or information found to be inaccurate or deficient shall be corrected or amended as feasible:

Provided that a body corporate shall not be responsible for the authenticity of the personal information or sensitive personal data or information supplied by the provider of information to such body corporate or any other person acting on behalf of such body corporate.

(7) Body corporate or any person on its behalf shall, prior to the collection of information including sensitive personal data or information, provide an option to the provider of the information to not to provide the data or information sought to be collected. The provider of information shall, at any time while availing the services or otherwise; also have an option to withdraw its consent given earlier to the body corporate. Such withdrawal of the consent shall be sent in writing to the body corporate. In the case of provider of information not providing or later on withdrawing his consent, the body corporate shall have the option not to provide goods or services for which the said information was sought.

(8) Body corporate or any person on its behalf shall keep the information secure as provided in rule 8.

(9) Body corporate shall address any discrepancies and grievances of their provider of the information with respect to processing of information in a time bound manner. For this purpose, the body corporate shall designate a Grievance Officer and publish his name and contact details on its website. The Grievance Officer shall redress the grievances of provider of information expeditiously but within one month from the date of receipt of grievance.

**6. Disclosure of information.**—(1) Disclosure of sensitive personal data or information by body corporate to any third party shall require prior permission from the provider of such information, who has provided such information under lawful contract or otherwise, unless such disclosure has been agreed to in the contract between the body corporate and provider of Information, or where the disclosure is necessary for compliance of a legal obligation:

Provided that the information shall be shared, without obtaining prior consent from provider of information, with Government agencies mandated under the law to obtain information including sensitive personal data or information for the purpose of verification of identity, or for prevention, detection, investigation including cyber incidents, prosecution, and punishment of offences. The Government agency shall send a request in writing to the body corporate possessing the sensitive personal data or information stating clearly the purpose of seeking such information. The Government agency shall also state that the information so obtained shall not be published or shared with any other person.

(2) Notwithstanding anything contained in sub-rule (1), any sensitive personal data or information shall be disclosed to any third party by an order under the law for the time being in force.

(3) The body corporate or any person on its behalf shall not publish the sensitive personal data or information.

(4) The third party receiving the sensitive personal data or information from body corporate or any person on its behalf under sub-rule (1) shall not disclose it further.

**7. Transfer of information.**—A body corporate or any person on its behalf may transfer sensitive personal data or information including any information, to any other body corporate or a person in India, or located in any other country, that ensures the same level of data protection that is adhered to by the body corporate as provided for under these rules. The transfer may be allowed only if it is necessary for the performance of the lawful contract between the body corporate or any person on its behalf and provider of information or where such person has consented to data transfer.

**8. Reasonable Security Practices and Procedures.**—(1) A body corporate or a person on its behalf shall be considered to have complied with reasonable security practices and procedures, if they have implemented such security practices and standards and have a comprehensive documented information security programme and information security policies that contain managerial, technical, operational and physical security control measures that are commensurate with

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the information assets being protected with the nature of business. In the event of an information security breach, the body corporate or a person on its behalf shall be required to demonstrate, as and when called upon to do so by the agency mandated under the law, that they have implemented security control measures as per their documented information security programme and information security policies.

(2) The international Standard IS/ISO/IEC 27001 on "Information Technology - Security Techniques - Information Security Management System - Requirements" is one such standard referred to in sub-rule (1).

(3) Any industry association or an entity formed by such an association, whose members are self-regulating by following other than IS/ISO/IEC codes of best practices for data protection as per sub-rule (1), shall get its codes of best practices duly approved and notified by the Central Government for effective implementation.

(4) The body corporate or a person on its behalf who have implemented either IS/ISO/IEC 27001 standard or the codes of best practices for data protection as approved and notified under sub-rule (3) shall be deemed to have complied with reasonable security practices and procedures provided that such standard or the codes of best practices have been certified or audited on a regular basis by entities through independent auditor, duly approved by the Central Government. The audit of reasonable security practices and procedures shall be carried out by an auditor at least once a year or as and when the body corporate or a person on its behalf undertake significant upgradation of its process and computer resource.

## THE INFORMATION TECHNOLOGY (INTERMEDIARIES GUIDELINES) RULES, 2011<sup>1</sup>

*In exercise of the powers conferred by clause (zg) of sub-section (2) of section 87 read with sub-section (2) of section 79 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules, namely:—*

1. Short title and commencement.—(1) These rules may be called the Information Technology (Intermediaries Guidelines) Rules, 2011.

(2) They shall come into force on the date<sup>2</sup> of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the context otherwise requires,—

- (a) "Act" means the Information Technology Act, 2000 (21 of 2000);
- (b) "Communication link" means a connection between a hypertext or graphical element (button, drawing, image) and one or more such items in the same or different electronic document wherein upon clicking on a hyperlinked item, the user is automatically transferred to the other end of the hyperlink which could be another document or another website or graphical element.
- (c) "Computer resource" means computer resource as defined in clause (k) of sub-section (1) of section 2 of the Act;
- (d) "Cyber security incident" means any real or suspected adverse event in relation to cyber security that violates an explicitly or implicitly applicable security policy resulting in unauthorised access, denial of service or disruption, unauthorised use of a computer resource for processing or storage of information or changes to data, information without authorisation;
- (e) "Data" means data as defined in clause (o) of sub-section (1) of section 2 of the Act;
- (f) "Electronic Signature" means electronic signature as defined in clause (ta) of sub-section (1) of section 2 of the Act;
- (g) "Indian Computer Emergency Response Team" means the Indian Computer Emergency Response Team appointed under sub-section (1) of section 70(B) of the Act;
- (h) "Information" means information as defined in clause (v) of sub-section (1) of section 2 of the Act;
- (i) "Intermediary" means an intermediary as defined in clause (w) of sub-section (1) of section 2 of the Act;

1. *Vide* G.S.R. 314(E), dated 11th April, 2011 published in the Gazette of India, Extra., Pt. II, Sec. 3(i), dated 13th April, 2011.

2. Came into force on 13-4-2011.

- (j) "User" means any person who access or avail any computer resource of intermediary for the purpose of hosting, publishing, sharing, transacting, displaying or uploading information or views and includes other persons jointly participating in using the computer resource of an intermediary.

(2) All other words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

**3. Due diligence to be observed by intermediary.**—The intermediary shall observe following due diligence while discharging his duties, namely:—

(1) The intermediary shall publish the rules and regulations, privacy policy and user agreement for access or usage of the intermediary's computer resource by any person.

(2) Such rules and regulations, terms and conditions or user agreement shall inform the users of computer resource not to host, display, upload, modify, publish, transmit, update or share any information that—

- (a) belongs to another person and to which the user does not have any right to;
- (b) is grossly harmful, harassing, blasphemous, defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever;
- (c) harm minors in any way;
- (d) infringes any patent, trademark, copyright or other proprietary rights;
- (e) violates any law for the time being in force;
- (f) deceives or misleads the addressee about the origin of such messages or communicates any information which is grossly offensive or menacing in nature;
- (g) impersonate another person;
- (h) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer resource;
- (i) threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign states, or public order or causes incitement to the commission of any cognisable offence or prevents investigation of any offence or is insulting any other nation.

(3) The intermediary shall not knowingly host or publish any information or shall not initiate the transmission, select the receiver of transmission, and select or modify the information contained in the transmission as specified in sub-rule (2):

Provided that the following actions by an intermediary shall not amount to hosting, publishing, editing or storing of any such information as specified in sub-rule (2)—

# THE INFORMATION TECHNOLOGY (PROCEDURE AND SAFEGUARD FOR MONITORING AND COLLECTING TRAFFIC DATA OR INFORMATION) RULES, 2009<sup>1</sup>

*In exercise of the powers conferred by clause (za) of sub-section (2) of section 87, read with sub-section (3) of section 69B of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby makes the following rules, namely:—*

**1. Short title and commencement.**—(1) These rules may be called the Information Technology (Procedure and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009.

(2) They shall come into force on the date<sup>2</sup> of their publication in the Official Gazette.

**2. Definitions.**—In these rules, unless the context otherwise requires,—

- (a) "Act" means the Information Technology Act, 2000 (21 of 2000);
- (b) "communication" means dissemination, transmission, carriage of information or signal in some manner and include both a direct communication and an indirect communication;
- (c) "communication link" means the use of satellite, microwave, radio, terrestrial line, wire, wireless or any other communication media to inter-connect computer resource;
- (d) "competent authority" means the Secretary to the Government of India in the Department of Information Technology under the Ministry of Communications and Information Technology;
- (e) "computer resource" means computer resource as defined in clause (k) of sub-section (1) of section 2 of the Act;
- (f) "cyber security incident" means any real or suspected adverse event in relation to cyber security that violates an explicitly or implicitly applicable security policy resulting in unauthorized access, denial of service/disruption, unauthorised use of a computer resource for processing or storage of information or changes to data, information without authorisation;
- (g) "cyber security breaches" means unauthorised acquisition or unauthorised use by a person of data or information that compromises the confidentiality, integrity or availability of information maintained in a computer resource;
- (h) "information" means information as defined in clause (v) of sub-section (1) of section 2 of the Act;
- (i) "information security practices" means implementation of security policies and standards in order to minimize the cyber security incidents and breaches;

1. Vide G.S.R. 782(E), dated 27th October, 2009, published in the Gazette of India, Extra., Pt. II, Sec. 3(i), No. 618, dated 27th October, 2009.

2. Came into force on 27-10-2009.

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- (j) "intermediary" means an intermediary as defined in clause (w) of sub-section (1) of section 2 of the Act;
- (k) "monitor" with its grammatical variations and cognate expressions, includes to view or inspect or record or collect traffic data or information generated, transmitted, received or stored in a computer resource by means of a monitoring device;
- (l) "monitoring device" means any electronic, mechanical, electro-mechanical, electro-magnetic, optical or other instrument, device, equipment or apparatus which is used or can be used, whether by itself in combination with any other instrument, device, equipment or apparatus, to view or inspect or record or collect traffic data or information;
- (m) "port" or "application port" means a set of software rules which identifies and permits communication between application to application, network to network, computer to computer, computer system to computer system;
- (n) "Review Committee" means the Review Committee constituted under rule 419A of the Indian Telegraph Rules, 1951;
- (o) "security policy" means documented business rules and processes for protecting information and the computer resource;
- (p) "traffic data" means traffic data as defined in *Explanation (ii)* to section 69B of the Act.

3. **Directions for monitoring.**—(1) No directions for monitoring and collection of traffic data or information under sub-section (3) of section 69B of the Act shall be issued, except by an order made by the competent authority.

(2) The competent authority may issue directions for monitoring for any or all of the following purposes related to cyber security, namely:—

- (a) forecasting of imminent cyber incidents;
- (b) monitoring network application with traffic data or information on computer resource;
- (c) identification and determination of viruses or computer contaminant;
- (d) tracking cyber security breaches or cyber security incidents;
- (e) tracking computer resource breaching cyber security or spreading virus or computer contaminants;
- (f) identifying or tracking of any person who has breached, or is suspected of having breached or being likely to breach cyber security;
- (g) undertaking forensic of the concerned computer resource as a part of investigation or internal audit of information security practices in the computer resource;
- (h) accessing a stored information for enforcement of any provisions of the laws relating to cyber security for the time being in force;
- (i) any other matter relating to cyber security.

Rule 4) *The Information Technology (Procedure and Safeguard for Monitoring 183 and Collecting Traffic Data or Information) Rules, 2009*

(3) Any direction issued by the competent authority under sub-rule (2) shall contain reasons for such direction and a copy of such direction shall be forwarded to the Review Committee within a period of seven working days.

(4) The direction of the competent authority for monitoring and collection of traffic data or information may include the monitoring and collection of traffic data or information from any person or class of persons or relating to any particular subject whether such traffic data or information, or class of traffic data or information, are received with one or more computer resources, being a computer resource likely to be used for the generation, transmission, receiving, storing of traffic data or information from or to one particular person or one or many set of premises.

**4. Authorised agency of Government for monitoring and collection of traffic data or information.**—(1) The competent authority may authorise any agency of the government for monitoring and collection of traffic data or information generated, transmitted, received or stored in any computer resource.

(2) The agency authorised by the competent authority under sub-rule (1) shall designate one or more nodal officer, not below the rank of the Deputy Secretary to the Government of India, for the purpose to authenticate and send the requisition conveying direction issued under rule 3 to the designated officers of the concerned intermediary or person in-charge of computer resources.

(3) The requisition under sub-rule (2) shall specify the name and designation of the officer or the agency to whom the monitored or collected traffic data or information is to be disclosed.

(4) The intermediaries or person in-charge of computer resource shall designate one or more officers to receive requisition and to handle such requisition from the nodal officer for monitoring or collection of traffic data or information.

(5) The requisition conveying directions for monitoring shall be conveyed to the designated officers of the intermediary or person in-charge of computer resources, in writing through letter or fax by the nodal officer or delivered, (including delivery by e-mail signed with electronic signature), by an officer not below the rank of under Secretary or officer of the equivalent rank.

(6) The nodal officer issuing the requisition conveying directions for monitoring under sub-rule (2) shall also make a request in writing to the designated officer of intermediary or person in-charge of computer resource for monitoring in accordance with the format indicated in such requisition and report the same to the officer designated under sub-rule (3).

(7) The nodal officer shall also make a request to the officer of intermediary or person in-charge of computer resource designated under sub-rule (4) to extend all facilities, co-operation and assistance in installation, removal and testing of equipment and also enable on-line access or to secure and provide online access to the computer resource for monitoring and collecting traffic data or information.

(8) On receipt of requisition under sub-rule (2) conveying the direction issued under sub-rule (2) of rule 3, the designated, officer of the intermediary or person in-charge of computer resource designated under sub-rule (4) shall acknowledge the receipt of requisition by way of letter or fax or electronically signed e-mail to



the nodal officer within a period of two hours from the time of receipt of such requisition.

(9) The officer of the intermediary or person in-charge of computer resource designated under sub-rule (4) shall maintain proper records of the requisitions received by him.

(10) The designated officer of the intermediary or person in-charge of computer resource shall forward in every fifteen days a list of requisition conveying direction for monitoring or collection of traffic data or information to the nodal officer which shall include details such as the reference and date of requisition conveying direction of the concerned competent authority.

5. **Intermediary to ensure effective check in handling monitoring or collection of traffic data or information.**—The intermediary or person in-charge of computer resources shall put in place adequate and effective internal checks to ensure that unauthorised monitoring or collection of traffic data or information does not take place and extreme secrecy is maintained and utmost care and precaution is taken in the matter of monitoring or collection of traffic data or information as it affects privacy of citizens and also that this matter is handled only by the designated officer of the intermediary or person in-charge of computer resource.

6. **Responsibility of intermediary.**—The intermediary or person in-charge of computer resource shall be responsible for the actions of their employees also, and in case of violation of the provision of the Act and rules made thereunder pertaining to maintenance of secrecy and confidentiality of information or any unauthorised monitoring or collection of traffic data or information, the intermediary or person in-charge of computer resource shall be liable for any action under the relevant provision of the laws for the time being in force.

7. **Review of directions of competent authority.**—The Review Committee shall meet at least once in two months and record its findings whether the directions issued under sub-rule (2) of rule 3 are in accordance with the provisions of sub-section (3) of section 69B of the Act and where the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above, it may set aside the directions and issue order for destruction of the copies, including corresponding electronic record of the monitored or collected traffic data or information.

8. **Destruction of records.**—(1) Every record, including electronic records pertaining to such directions for monitoring or collection of traffic data shall be destroyed by the designated officer after the expiry of a period of nine months from the receipt of direction or creation of record, whichever is later, except in a case where the traffic data or information is, or likely to be, required for functional requirements.

(2) Save as otherwise required for the purpose of any on going investigation, criminal complaint or legal proceedings the intermediary or the person in-charge of computer resource shall destroy records pertaining to directions for monitoring or collection of information within a period of six months of discontinuance of the monitoring or collection of traffic data and in doing so they shall maintain extreme secrecy.

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Rule 9] *The Information Technology (Procedure and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009*

9. Prohibition of monitoring or collection of traffic data or information without authorisation.—(1) Any person who, intentionally or knowingly, without authorisation under sub-rule (2) of rule 3 or sub-rule (1) of rule 4, monitors or collects traffic data or information, or attempts to monitor or collect traffic data or information, or authorises or assists any person to monitor or collect traffic data or information in the course of its occurrence or transmission at any place within India, shall be proceeded against, punished accordingly under the relevant provisions of the law for the time being in force.

(2) The monitoring or collection of traffic data or information in computer resource by the employee of an intermediary or person in-charge of computer resource or a person duly authorised by the intermediary, may be undertaken in course of his duty relating to the services provided by that intermediary, if such activities are reasonably necessary for the discharge his duties as per the prevailing industry practices, in connection with the following matters, namely:—

- (i) installation of computer resource or any equipment to be used with computer resource; or
- (ii) operation or maintenance of computer resource; or
- (iii) installation of any communication link or software either at the end of the intermediary or subscriber, or installation of user account on the computer resource of intermediary and testing of the same for its functionality;
- (iv) accessing stored information from computer resource relating to the installation, connection or maintenance of equipment, computer resource or a communication link or code; or
- (v) accessing stored information from computer resource for the purpose of—
  - (a) implementing information security practices in the computer resource;
  - (b) determining any security breaches, computer contaminant or computer virus;
  - (c) undertaking forensic of the concerned computer resource as a part of investigation or "internal audit"; or
- (vi) accessing or analysing information from a computer resource for the purpose of tracing a computer resource or any person who has contravened, or is suspected of having or being likely to contravene, any provision of the Act that is likely to have an adverse impact on the services provided by the intermediary.

(3) The Intermediary or the person in-charge of computer resource and its employees shall maintain strict secrecy and confidentiality of information while performing the actions as specified under sub-rule (2).

(4) The details of monitored or collected traffic data or information shall not be used or disclosed by intermediary or person in-charge of computer resource or any of its employees to any person other than the intended recipient of the said information under sub-rule (2) of rule 4. Any intermediary or its employees or

186 *The Information Technology (Procedure and Safeguard for Monitoring and Collecting Traffic Data or Information) Rules, 2009* [Rule 9]

person in-charge of computer resource who contravenes the provisions of this rule shall be proceeded against and punished accordingly under the relevant provisions of the Act or any other law for the time being in force.

**10. Prohibition of disclosure of traffic data or information by authorised agency.**—The details of monitored or collected traffic data or information shall not be used or disclosed by the agency authorised under sub-rule (1) of rule 4 for any other purpose, except for forecasting imminent cyber threats or general trend of port-wise traffic on Internet, or general analysis of cyber incidents, or for investigation or in judicial proceedings before the competent court in India.

**11. Maintenance of confidentiality.**—Save as otherwise provided in rule 10, strict confidentiality shall be maintained in respect of directions for monitoring or collection of traffic data or information issued by the competent authority under these rules.

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# The Identification of Prisoners Act, 1920

(33 of 1920)

*with*  
State Amendments

*with*  
SHORT NOTES

**Universal**  
**Law Publishing Co. Pvt. Ltd.**  
NEW DELHI - INDIA

# THE IDENTIFICATION OF PRISONERS ACT, 1920

## INTRODUCTION

The system of taking finger impressions, photographs, etc., of criminals and suspected criminals by police in India was void of legal sanction, except as regards registered members of criminal tribes. The need for legalising the practice had long been recognised but no steps were taken in this regard. Later when a large number of cases were reported to the then Government of India where prisoners had refused to allow their finger prints or photographs to be taken, it was considered necessary to place the taking of measurements, photographs etc., which is a normal incident of police work in India as elsewhere, on a regular footing. In order to provide legal authority for taking of measurements, finger impressions, foot-prints and photographs of persons convicted of, or arrested in connection with, certain offences the Identification of Prisoners Bill was introduced in the Legislature.

## STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to provide legal authority for the taking of measurements, finger impressions, foot-prints and photographs of persons convicted of, or arrested in connection with, certain offences. The value of the scientific use of finger impressions and photographs as agents in the detection of crime and the identification of criminals is well known, and modern developments in England and other European countries render it unnecessary to enlarge upon the need for the proposed legislation.

The existing system by which the police in India take finger impressions, photographs, etc., of criminals and suspected criminals is void of legal sanction, except as regards registered members of criminal tribes, in whose case provision exists for the taking of finger impressions in section 9 of the Criminal Tribes Act, 1911 (III of 1911). The need for legalizing the practice has long been recognised, but it was not thought expedient to take the matter up so long as no practical difficulties arose. Instances have recently been reported to the Government of India where prisoners have refused to allow their finger prints or photographs to be taken. With a view to prevent such refusals in future it is considered necessary without further delay to place the taking of measurements, etc., which is a normal incident of police work in India as elsewhere on a regular footing. No measurement, etc., of any person will be taken compulsorily when that person has been arrested.

## ACT 33 OF 1920

The Identification of Prisoners Bill having been passed by the Legislature received its assent on 9th September, 1920. It came on the Statute Book as THE IDENTIFICATION OF PRISONERS ACT, 1920 (33 of 1920).

## LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Adaptation of Laws Order, 1950.
2. The Adaptation of Laws (No. 3) Order, 1956.
3. The Delegated Legislation Provisions (Amendment) Act, 1985 (4 of 1986).

# THE IDENTIFICATION OF PRISONERS ACT, 1920<sup>1</sup>

(33 of 1920)

[9th September, 1920]

*An Act to authorise the taking of measurements and photographs of convicts and others.*

WHEREAS it is expedient to authorise the taking of measurements and photographs of convicts and others; it is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Identification of Prisoners Act, 1920; and

<sup>2</sup>[(2) It extends to the whole of India except <sup>3</sup>[the territories which, immediately before the 1st November, 1956, were comprised in Part B States].]

## STATE AMENDMENTS

**Andhra Pradesh.**—In its application to the areas comprised in the Former Part B State of Hyderabad, (now forming part of Andhra Pradesh) for sub-section (2), substitute the following sub-section, namely:—

"(2) It extends to the whole of the Hyderabad area of the State of Andhra Pradesh."

[*Vide* Hyderabad Act 27 of 1956, sec. 2 and Sch. as adapted by Andhra Pradesh A.L.O., 1957.]

**Karnataka.**—In sub-section (2), after the words "Part B States" add the following words, namely:—

"other than the territories specified in clause (a) and clause (b) of sub-section (1) of section 7 of the States Reorganisation Act, 1956."

[*Vide* Karnataka Act 29 of 1975, sec. 4 (1) (w.e.f. 12-8-1975).]

**Madhya Pradesh.**—In sub-section (2), after the words "Part B States", insert the words "other than the Madhya Bharat and Sironj regions of the State of Madhya Pradesh".

[*Vide* Madhya Pradesh Act 40 of 1961, sec. 3 and Sch., Pt. A (w.e.f. 1-2-1962).]

**Maharashtra.**—In sub-section (2), after the words "Part B States", insert the words "other than the Hyderabad Area of the State of Maharashtra."

[*Vide* Maharashtra Act 35 of 1970, sec. 2 (w.r.e.f. 4-9-1956).]

2. Definitions.—(1) In this Act, unless there is anything repugnant in the subject or context,—

- (a) "measurements" include finger impressions and foot-print impressions;
- (b) "police officer" means an officer in-charge of a police-station, a police officer making an investigation under Chapter XIV of the Code of Criminal Procedure, 1898 (5 of 1898)\* or any other police officer not below the rank of sub-inspector; and
- (c) "prescribed" means prescribed by rules made under this Act.

1. For Statement of Objects and Reasons, see Gazette of India, 1920, Pt. V, p. 162; and for Proceedings in Council see Gazette of India, 1920, Pt. VI, p. 1037 and 1143.

2. Subs. by the A.O. 1950, for sub-section (2).

3. Subs. by the A.O. (No. 3) 1956, for "Part B States".

\* Now under Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974).

## STATE AMENDMENTS

Madhya Pradesh.—In clause (a), for the words "finger impressions", substitute the words "finger impressions, palm impressions".

[*Vide* Madhya Pradesh Act 40 of 1961, sec. 3 and Sch., Pt. A (w.e.f. 1-2-1962).]

Tamil Nadu.—In clause (b), after the words "sub-inspector", insert the words "and includes Finger Print Experts of the Finger Print Bureau, Madras and of the Single Digit Finger Print Sections in the State of Tamil Nadu".

[*Vide* Tamil Nadu Act 44 of 1981, sec. 2 (w.e.f. 27-7-1981)].

3. Taking of measurements, etc., of convicted persons.—Every person who has been—

- (a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction; or
- (b) ordered to give security for his good behaviour under section 118 of the Code of Criminal Procedure, 1898 (5 of 1898)\*,

shall, if so required, allow his measurements and photograph to be taken by a police officer in the prescribed manner.

## STATE AMENDMENTS

Gujarat.—In clause (b), at the end, add the following words, namely:—

"or under section 93 of the Bombay Prohibition Act, 1949."

[*Vide* Bombay Act 58 of 1953, sec. 2 (w.e.f. 2-11-1953); Act 11 of 1960, sec. 87.]

Maharashtra.—For section 3, substitute the following section, namely:—

"3. Taking of measurements, etc., of convicted persons.—Every person who has been—

- (a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards or of any offence punishable under section 19 of the Dangerous Drugs Act, 1930, or of any offence which would render him liable to enhanced punishment on a subsequent conviction, or
- (b) ordered to give security for his good behaviour under section 118 of the Code of Criminal Procedure, 1898, or under section 93 of the Bombay Prohibition Act, 1949, or to give security for abstaining from commission of certain offences under section 18 of the Dangerous Drugs Act, 1930.

shall, if so required, allow his measurements and photographs to be taken by a police officer in the prescribed manner."

[*Vide* Maharashtra Act 35 of 1970, sec. 4 (w.e.f. 1-3-1971).]

## COMMENTS

It shall be incumbent on a person who has been convicted of any offence which is punishable with rigorous imprisonment of one year or more or ordered to give security for his good behaviour, if so required, to allow a police officer to take his measurements and photograph.

4. Taking of measurements, etc., of non-convicted persons.—Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner.

\* Now under section 117 of the Code of Criminal Procedure, 1973 (2 of 1974).

## STATE AMENDMENTS

Gujarat.—For section 4, substitute the following section, namely:—

"4. *Taking of measurements or photographs of unconvicted persons.*—Any person—

(a) who has been arrested—

(i) under section 55 of the Code of Criminal Procedure, 1898, or under section 4 of the Bombay Beggars Act, 1945,

(ii) in connection with an offence punishable under section 122 of the Bombay Police Act, 1951, or under section 6 or 9 of the Bombay Beggars Act, 1945, or in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards, or

(b) in respect of whom a direction or order under section 55 or 56 of the Bombay Police Act, 1951, or under sub-section (1) or (2) of section 23 of the Bombay Beggars Act, 1945, or under section 2 of the Bombay Public Security Measures Act, 1947, has been made,

shall, if so required by a police officer, allow his measurements or photograph to be taken in the prescribed manner."

[Vide Bombay Act 15 of 1948, sec. 2 (w.e.f. 24-3-1948) and 21 of 1954, sec. 3 and Sch. II (w.e.f. 8-4-1954), Act 11 of 1960, sec. 87.]

Karnataka.—For section 4, substitute the following section, namely:—

"4. *Taking of measurements or photographs of unconvicted persons.*—Any person—

(a) who has been arrested in connection with an offence punishable under section 96 of the Karnataka Police Act, 1963, or in connection with an offence punishable with rigorous imprisonment for a term of one year or upward or in connection with an offence for the commission of which on a second or subsequent occasion enhanced penalties have been provided for under any law for the time being in force; or

(b) in respect of whom direction or order under section 54 or 55 of the Karnataka Police Act, 1963, has been made;

shall, if so required by a police officer, allow his measurements or photographs to be taken in the prescribed manner."

[Vide Karnataka Act 29 of 1975, sec. 4 (2) (w.e.f. 12-8-1975)].

Maharashtra.—For section 4, substitute the following section, namely:—

"4. Any person arrested—

(a) who has been convicted—

(i) in connection with an offence punishable under section 19 of the Dangerous Drugs Act, 1930; or section 66, 69 or 85 of the Bombay Prohibition Act, 1949; or section 122 of the Bombay Police Act, 1951; or section 7 of the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; or section 8 of the Suppression of the Immoral Traffic in Women and Girls Act, 1956; or section 6 or 11 of the Bombay Prevention of Begging Act, 1959; or any other offence punishable with rigorous imprisonment for a term of one year or upwards, or

(ii) under section 54, 55 or 151 of the Code of Criminal Procedure, 1898 or section 4 of the Passport (Entry into India) Act, 1920, or

(b) in respect of whom a direction or order under section 5 of the Passport (Entry into India) Act, 1920, or under sections 55, 56 or 57 of the Bombay Police Act, 1951, has been made, or



(c) to whom a pardon has been tendered under section 337 or 338 or who has been acquitted under section 339A of the Code of Criminal Procedure, 1898. shall, if so required by a Police Officer, allow his measurements or photograph to be taken in the prescribed manner."

[Vide Maharashtra Act 35 of 1970, sec. 5 (w.e.f. 1-3-1971).]

#### Section 4A

Gujarat: Maharashtra.—In its application to the State of Bombay, after section 4, insert the following section, namely:—

"4A. *Taking of measurements, etc., of habitual offenders against whom restriction order is made.*—Any person against whom an order of restriction has been made under the provisions of the Bombay Habitual Offenders Act, 1959, shall, if so required, allow his measurements and photographs to be taken by a police officer in the prescribed manner."

[Vide Bombay Act 58 of 1953, sec. 3 (w.e.f. 2-11-1953) and Maharashtra Act 35 of 1970, sec. 6 (w.e.f. 1-3-1971); Act 11 of 1960, sec. 87.]

#### Section 4A and 4B

Karnataka:—After section 4, insert the following section, namely:—

4A. *Taking of measurements, etc., of habitual offenders against whom restriction order is made.*—Any person against whom an order of restriction has been made under the provisions of the Karnataka Habitual Offenders Act, 1961, shall if so required by a police officer, allow his measurements or photograph to be taken in the prescribed manner."

[Vide Karnataka Act 29 of 1975, sec. 4(2) (w.e.f. 12-8-1975).]

After section 4A, insert the following section, namely:—

4B. *Taking of measurements etc., of beggars under the Karnataka Prohibition of Beggary Act, 1975.*—Any person who has been arrested and not released under sub-section (2) of section 11 of the Karnataka Prohibition of Beggary Act, 1975 (Karnataka Act 27 of 1975) or against whom an order of detention has been made under sub-section (1) of section 12 of the said Act, shall, if so required by an officer incharge of a receiving centre or relief centre allow his measurements and photographs to be taken in the prescribed manner.

[Vide Karnataka Act 1 of 1982, sec. 2 (w.e.f. 16-1-1982)].

5. **Power of Magistrate to order a person to be measured or photographed.**—If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898 (5 of 1898)† it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer:

Provided that no order shall be made directing any person to be photographed except by a Magistrate of the first class:

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

† Now Code of Criminal Procedure, 1973 (2 of 1974).

## STATE AMENDMENTS

Gujarat: Maharashtra.—In its application to these States, in section 5—

- (a) in the first proviso, for the words "except by a Magistrate of the first class", substitute the words "except by the District Magistrate, a Sub-Divisional Magistrate, a Magistrate of the first class."

[Vide Bombay Act 8 of 1954 sec. 2 and Sch., Part II (w.e.f. 10-2-1954) and Maharashtra Act 35 of 1970, sec. 3 (w.e.f. 1-3-1971); Act 11 of 1960, sec. 87.]

- (b) to the first proviso, add the words "or a Presidency Magistrate"\*

[Vide Bombay Act 11 of 1922, sec. 3 (w.e.f. 14-12-1922), as amended by Bombay Act 17 of 1945; Maharashtra Act 35 of 1970, sec. 3 (w.e.f. 1-3-1971); Act 11 of 1960, sec. 87.]

\*This institution has been replaced by that of the Metropolitan Magistrate. Besides Bombay, Calcutta and Madras, Ahmedabad has such Magistrate—See Code of Criminal Procedure 1973, sections 8 and 16.

Karnataka.—In section 5, substitute the following for first proviso:—

"Provided that no order shall be made directing any person to be photographed except by a District Magistrate, a Sub-Divisional Magistrate or a Magistrate of the First Class."

[Vide Karnataka Act 29 of 1975, sec. 4 (3) (w.e.f. 12-8-1975)].

## COMMENTS

For the purposes of any investigation or proceeding under the Code of Criminal Procedure a Magistrate can, by order, direct any person to allow his measurements or photograph to be taken and in that case the person so ordered shall be produced or shall attend the court at the time and place specified in the order.

6. Resistance to the taking of measurements, etc.—(1) If any person who under this Act is required to allow his measurements or photographs to be taken resists or refuses to allow the taking of the same, it shall be lawful to use all means necessary to secure the taking thereof.

(2) Resistance to or refusal to allow the taking of measurements or photographs under this Act shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).

## COMMENTS

Where any person resists or refuses to allow his measurements or photograph to be taken, all lawful means shall be used to secure the taking of measurements or photograph. Resistance or refusal to allow taking of measurements or photograph is an offence under section 186 of the Indian Penal Code.

7. Destruction of photographs and records of measurements, etc., on acquittal.—Where any person who, not having been previously convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards, has had his measurements taken or has been photographed in accordance with the provisions of this Act is released without trial or discharged or acquitted by any court, all measurements and all photographs (both negatives and copies) so taken shall, unless the court or (in a case where such person is released without trial) the District Magistrate or Sub-Divisional Officer for reasons to be recorded in writing otherwise directs, be destroyed or made over to him.

## STATE AMENDMENTS

Gujarat: Maharashtra.—In section 7, after the words 'Officer', insert the words "or in any area for which a Commissioner of Police has been appointed by the Commissioner of Police".

[*Vide* Bombay Act 11 of 1922 sec. 4 (w.e.f. 14-12-1922), as amended by Bombay Acts 17 of 1945; 21 of 1954 and 56 of 1959; Maharashtra Act 35 of 1970, sec. 3 (w.e.f. 1-3-1971); Act 11 of 1960, sec. 87.]

Note.—Cities of Nagpur, Pune, Thana etc. also have Commissioners of Police now. Karnataka.—For section 7, substitute the following section, namely:—

"7. *Destruction of photographs and records of measurements etc., on acquittal.*—

Where any person who not having been previously convicted of an offence punishable with rigorous imprisonment for a term of one year or upwards has had his measurements taken or has been photographed in accordance with the provisions of this Act is released without trial or discharged or acquitted by any Court, all measurements and all photographs (both negatives and copies) so taken shall, unless the Court or in a case where a person is released without trial, the District Magistrate or the Sub-Divisional Magistrate, or in any area where a Commissioner of Police has been appointed, the Commissioner of Police, for reasons to be recorded in writing, otherwise directs, be destroyed or made over to him."

[*Vide* Karnataka Act 29 of 1975, sec. 4(4) (w.e.f. 12-8-1975).]

8. Power to make rules.—(1) The State Government may, <sup>1</sup>[by notification in the Official Gazette,] make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for—

- (a) restrictions on the taking of photographs of persons under section 5;
- (b) the places at which measurements and photographs may be taken;
- (c) the nature of the measurements that may be taken;
- (d) the method in which any class or classes of measurements shall be taken;
- (e) the dress to be worn by a person when being photographed under section 3; and
- (f) the preservation, safe custody, destruction and disposal of records of measurements and photographs.

<sup>1</sup>[(3) Every rule made under this section shall be laid, as soon as may be after it is made, before the State Legislature.]

#### STATE AMENDMENTS

Gujarat: Maharashtra.—In clause (e) of sub-section (2), for the words "under section 3", substitute the words "in accordance with the provisions of this Act."

[*Vide* Bombay Act 58 of 1953, sec. 4 (w.e.f. 1-11-1953) Maharashtra Act 35 of 1970, sec. 3 (w.e.f. 1-3-1971); Act 11 of 1960, sec. 87.]

Karnataka.—In sub-section (2), in clause (e), for the words "under section 3", substitute the words "in accordance with the provisions of this Act."

[*Vide* Karnataka Act 29 of 1975, sec. 4(5) (w.e.f. 12-8-1975).]

9. Bar of suits.—No suit or other proceeding shall lie against any person for anything done, or intended to be done, in good faith under this Act or under any rule made thereunder.

#### COMMENTS

If anything has been done or intended to be done in good faith under this Act or under any rule made thereunder then no suit or proceeding shall lie.

1. Ins. by Act 4 of 1986, sec. 2 and Sch., Sl. No. 8 (w.e.f. 15-5-1986).

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# The Majority Act, 1875

(9 of 1875)

*with*

The Guardian and Wards Act, 1890 (8 of 1890)

*as amended by*

The Personal Laws (Amendment) Act, 2010

(30 of 2010)

*along with*

SHORT NOTES

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THE MAJORITY ACT, 1875<sup>1</sup>

(9 of 1875)

[2nd March, 1875]

*An Act to amend the law respecting the age of majority.*

Preamble.—WHEREAS, in the case of persons domiciled in <sup>2</sup>[India] it is expedient <sup>3</sup>[to specify the age of majority]; It is hereby enacted as follows:—

1. Short title.—This Act may be called the <sup>4</sup>[\*\*\*] Majority Act, 1875.

Local extent.—<sup>5</sup>[It extends to the whole of India <sup>6</sup>[except the State of Jammu and Kashmir]];

Commencement and operation.—and it shall come into force and have effect only on the expiration of three months from the passing thereof.

2. Saving.—Nothing herein contained shall affect—

- (a) the capacity of any persons to act in the following matters (namely),—marriage, dower, divorce and adoption;
- (b) the religion or religious rites and usages of any class of <sup>7</sup>[citizens of India]; or
- (c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

<sup>8</sup>[3. Age of majority of persons domiciled in India.—(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.]

## COMMENTS

Age of majority of a person domiciled in India is on his completing the age of eighteen years and not before. In computing the age, the day on which he is born is to be included as a whole day.

- 
1. This act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, sec. 2 and Sch. I and the whole of the Union territory of Lakshadweep by Reg. 8 of 1965, sec. 3 and Sch.

This Act has been extended to Pondicherry by Act 26 of 1968, subject to the following modification:—

In section 1 at the end, insert:—

"Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry".

2. Subs. by Act 3 of 1951, sec. 3 and Sch., for "Part A States and Part C States".
3. Subs. by Act 33 of 1999 sec. 2, for certain words (w.e.f. 16-12-1999).
4. The word "Indian" omitted by Act 33 of 1999, sec. 3 (w.e.f. 16-12-1999).
5. Subs. by the A.O. 1950, for the original para.
6. Subs. by Act 3 of 1951, sec. 3 and Sch., for "except Part B States".
7. Subs. by the A.O. 1950, for "His Majesty's subjects in India".
8. Subs. by Act 33 of 1999, sec 4 for sections 3 and 4 (w.e.f. 16-12-1999).

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# The Registration Act, 1908

(16 of 1908)

*with*  
State Amendments

11th  
New Edition



*along with*  
SHORT NOTES

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[Vide Uttar Pradesh Act 29 of 1989, sec. 2 (w.e.f. 11-5-1989).]

\* The word "photostat" omitted by Uttar Pradesh Act 36 of 2001, sec. 7 (w.e.f. 20-5-2002).

† The words, "in such areas as may be notified by the State Government," omitted by Uttar Pradesh Act 36 of 2001, sec. 7 (w.e.f. 20-5-2002).

†† Subs. by Uttar Pradesh Act 36 of 2001, sec. 7(b), for clauses (c) and (d) (w.e.f. 20-5-2001).

④ Sub-section (3) omitted by Uttar Pradesh Act 36 of 2001, sec. 7(c) (w.e.f. 20-5-2001).

④④ Section 32B, as inserted by Uttar Pradesh Act 27 of 1994, sec. 5, omitted by Uttar Pradesh Act 36 of 2001, sec. 8 (w.e.f. 20-5-2001).

<sup>1</sup>[32A. Compulsory affixing of photograph, etc.—Every person presenting any document at the proper registration office under section 32 shall affix his passport size photograph and fingerprints to the document:

Provided that where such document relates to the transfer of ownership of immovable property, the passport size photograph and fingerprints of each buyer and seller of such property mentioned in the document shall also be affixed to the document.]

33. Power-of-attorney recognizable for purposes of section 32.—(1) For the purposes of section 32, the following powers-of-attorney shall alone be recognized, namely:—

- (a) if the principal at the time of executing the power-of-attorney resides in any part of <sup>2</sup>[India] in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides;
- (b) if the principal at the time aforesaid <sup>3</sup>[resides in any part of India in which this Act is not in force], a power-of-attorney executed before and authenticated by any Magistrate;
- (c) if the principal at the time aforesaid does not reside in <sup>2</sup>[India], a power-of-attorney executed before and authenticated by a Notary Public, or any Court, Judge, Magistrate, <sup>4</sup>[Indian] Consul or Vice-Consul, or representative <sup>5</sup>[\*\*\*] of the Central Government:

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section, namely:—

- (i) persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend;
- (ii) persons who are in jail under civil or criminal process; and
- (iii) persons exempt by law from personal appearance in Court.

1. Ins. by Act 48 of 2001, sec. 5 (w.e.f. 24-9-2001).

2. Subs. by Act 3 of 1951, sec. 3 and Sch., for "the States" (w.e.f. 1-4-1951).

3. Subs. by Act 3 of 1951, sec. 3 and Sch., for "resides in any other part of the States" (w.e.f. 1-4-1951).

4. Subs. by the A.O. 1950, for "British".

5. The words "of His Majesty or" omitted by the A.O. 1950.

<sup>1</sup>[Explan  
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# The Right to Information Act, 2005

(22 of 2005)

*along with*

- THE RIGHT TO INFORMATION (REGULATION OF FEE AND COST) RULES, 2005
- THE CENTRAL INFORMATION COMMISSION (APPEAL PROCEDURE) RULES, 2005
  - ADDRESS AND MEMBERS OF CENTRAL INFORMATION COMMISSION
  - LIST OF CENTRAL PUBLIC INFORMATION OFFICERS

*and*

THE OFFICIAL SECRETS ACT, 1923 (19 of 1923)

*with*

SHORT NOTES

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- (iv) any other material produced by a computer or any other device;
- (j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—
  - (i) inspection of work, documents, records;
  - (ii) taking notes, extracts, or certified copies of documents or records;
  - (iii) taking certified samples of material;
  - (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;
- (k) "State Information Commission" means the State Information Commission constituted under sub-section (1) of section 15;
- (l) "State Chief Information Commissioner" and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of section 15;
- (m) "State Public Information Officer" means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5;
- (n) "third party" means a person other than the citizen making a request for information and includes a public authority.

## CHAPTER II

### RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

3. Right to information.—Subject to the provisions of this Act, all citizens shall have the right to information.

4. Obligations of public authorities.—(1) Every public authority shall—

- (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;
- (b) publish within one hundred and twenty days from the enactment of this Act,—
  - (i) the particulars of its organisation, functions and duties;
  - (ii) the powers and duties of its officers and employees;
  - (iii) the procedure followed in the decision making process, including channels of supervision and accountability;
  - (iv) the norms set by it for the discharge of its functions;

- (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- (vi) a statement of the categories of documents that are held by it or under its control;
- (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- (ix) a directory of its officers and employees;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (xiii) particulars of recipients of concessions, permits or authorisations granted by it;
- (xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
- (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (xvi) the names, designations and other particulars of the Public Information Officers;
- (xvii) such other information as may be prescribed, and thereafter update these publications every year;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- (d) provide reasons for its administrative or quasi judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

Sec. 5]

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(3) For the purpose of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

*Explanation.*—For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

**5. Designation of Public Information Officers.**—(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

6. Request for obtaining information.—(1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

- (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
- (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

- (i) which is held by another public authority; or
- (ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

#### COMMENTS

For obtaining information a person has to make a request in writing or through electronic means in English or Hindi or in the official language of the area, with the prescribed fee, to the Central Public Information Officer or State Public Information Officer of the concerned public authority, or to the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be.

7. Disposal of request.—(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be fails to give decision on the request for information

within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be shall send an intimation to the person making the request, giving—

- (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;
- (b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall communicate to the person making the request,—

- (i) the reasons for such rejection;
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

8. Exemption from disclosure of information.—(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (f) information received in confidence from foreign government;
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

- (j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

9. Grounds for rejection to access in certain cases.—Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

#### COMMENTS

If a request for information involves an infringement of copyright subsisting in a person other than a State, it may be rejected.

10. Severability.—(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.

(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall give a notice to the applicant, informing,—

- (a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;
- (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;
- (c) the name and designation of the person giving the decision;
- (d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and
- (e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

## COMMENTS

Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then access may be provided to that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from any part that contains exempt information.

**11. Third party information.**—(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

## COMMENTS

If the requested information or record, or part thereof which relates to or has been supplied by a third party and has been treated as confidential by that party, then the Central Public Information Officer or State Public Information Officer, as the case may be, shall within five days give written notice to such third party of the request and of the fact that he intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed and such submission of the third party shall be kept in view while taking a decision about disclosure of information.

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THE BOMBAY HABITUAL OFFENDERS ACT, 1959.

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# BOMBAY ACT No. LXI OF 1959.<sup>1</sup>

## [THE BOMBAY HABITUAL OFFENDERS ACT, 1959.]

*(This Act received the assent of the President on the 17<sup>th</sup> October 1959; assent was first published in Bombay Government Gazette, Part IV, Extraordinary, on the 26<sup>th</sup> October 1959).*

Adapted and modified by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

Amended by Mah. 14 of 1960.

Amended by Mah. 35 of 1965.

An Act to make better provision for the treatment and training of habitual offenders and for certain other matters.

WHEREAS it is expedient to make better provision for the treatment and training of habitual offenders and for certain other matters; It is hereby enacted in the Tenth Year of the Republic of India as follows :—

### CHAPTER I.

#### PRELIMINARY.

1. (1) This Act may be called the Bombay Habitual Offenders Act, 1959.

Short title,  
extent and  
commencement.

(2) It extends to the whole of the <sup>2</sup>[State of Maharashtra].

(3) It shall come into force on such date<sup>3</sup> as the State Government may, by notification in the *Official Gazette*, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

V of 1898. (a) "Code" means the Code of Criminal Procedure, 1898\*;

(b) "corrective settlement" means any place established, approved or certified as a corrective settlement under section 14;

(c) "district" includes Greater Bombay;

(d) "District Magistrate",—

(i) in Greater Bombay, means the Commissioner of Police,

\* \* \* \*

<sup>1</sup> For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1959, Part V, page 347.

<sup>2</sup> These words were substituted for the words "State of Bombay" by the Maharashtra Adaptation of Laws (State and Concurrent Subjects) Order, 1960.

<sup>3</sup> 1st day of January 1961 (vide G.N., H.D., No. BOH. 1059/19607-IV, dated the 26<sup>th</sup> December 1960).

<sup>4</sup> Sub-clause (ii) was deleted by Mah. 14 of 1960, s. 2(2), Sch.

\* Now See Code of Criminal Procedure, 1973 (2 of 1974).

*Bombay Habitual Offenders Act, 1959.*

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(e) "habitual offender" means any person who, since his attaining the age of eighteen years,—

(i) during any consecutive period (whether before or after the commencement of this Act or partly before and partly after such commencement) of five years, has been sentenced on conviction on not less than three occasions, to a substantive term of imprisonment for one or more of the scheduled offences committed on separate occasions, being offences which are not so connected together as to form parts of the same transaction and

(ii) such sentence has not been reversed in appeal or revision:

Provided that in computing the consecutive period of five years aforesaid, any period spent in jail either under a sentence of imprisonment or under detention shall not be taken into account;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "registered offender" means a habitual offender registered or re-registered under this Act;

(h) "scheduled offence" means an offence specified in the Schedule or an offence analogous thereto ;

(i) "Superintendent of Police" in Greater Bombay means an officer appointed by the State Government to perform the duties of a Superintendent of Police under this Act.

**CHAPTER II.****REGISTRATION OF HABITUAL OFFENDERS AND RESTRICTION OF THEIR MOVEMENTS.**

Power of  
State  
Govern-  
ment  
to direct  
registration  
of habitual  
offenders.

3. The State Government may direct the District Magistrate to make a register of habitual offenders within his district, by entering therein the names and other prescribed particulars of such offenders.

Procedure  
for  
preparing  
a register  
of habitual  
offenders.

4. For the purpose of carrying out the direction given under section 3, the District Magistrate or any officer appointed by him in this behalf shall, by notice in the prescribed form to be served in the prescribed manner, call upon every habitual offender in the district—

(a) to appear before him at a time and place specified in the notice ;

(b) to furnish such information as may be necessary to enable him to enter the name and other prescribed particulars of the habitual offender in the register; and

(c) to allow the finger and palm impressions, foot-prints and photographs of the habitual offender to be taken:

Provided that the name and other prescribed particulars of habitual offender shall not be entered in the register, unless he has been given reasonable opportunity of showing cause why such entry should not be made.

*Bombay Habitual Offenders Act, 1959.*

5. (1) The register shall be placed in the keeping of the Superintendent of Police of the district who shall, from time to time, report to the District Magistrate any alterations which ought, in his opinion, to be made therein.

Charge of register and alterations therein.

(2) After the register has been placed in the keeping of the Superintendent of Police, no fresh entry shall be made in the register, nor shall any entry be cancelled except by or under, an order in writing of the District Magistrate.

6. The District Magistrate or any officer appointed by him in this behalf, may at any time order the finger and palm impressions, foot-prints and photographs, of any registered offender to be taken.

Power to take finger and palm impressions, foot-prints and photographs at any time.

7. (1) Every registered offender shall notify to such authority, and in such manner, as may be prescribed, any change or intended change of his ordinary residence :

Registered offenders to notify change of residence and to report themselves.

Provided that where such offender changes, or intends to change, his ordinary residence to another district (whether within the State or not) he shall notify the change or intended change to the District Magistrate.

(2) The District Magistrate may, by order in writing, direct that any registered offender shall—

(a) report himself once in each month, or where the District Magistrate for reasons specified in the order so directs, more frequently, to such authority, and in such manner, as may be specified in the order, and

(b) notify any absence or intended absence from his ordinary residence to the aforesaid authority :

Provided that the District Magistrate may exempt any such offender from notifying any absence or intended absence from his ordinary residence for such period, and under such conditions, as to him appear reasonable.

8. (1) Where any registered offender changes his ordinary residence to another district within the State, the District Magistrate of the district in which the offender is registered shall inform the District Magistrate of the other district of such change, and at the same time furnish him with the name and other particulars relating to the registered offender in the register.

Procedure by District Magistrates on change of residence of habitual offender to other district.

(2) On the receipt of such information, the District Magistrate of the other district shall enter in his register the name and other particulars of the registered offender furnished to him, and inform the District Magistrate of the first district of such registration, and thereupon such District Magistrate shall cancel from his register the entry relating to the offender:

*Bombay Habitual Offenders Act, 1959.*

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Provided that where a registered offender changes his ordinary residence to another district outside the State, the District Magistrate of the first district shall, while furnishing the District Magistrate of the other district with the name and other particulars of the registered offender, make a request to that District Magistrate that he may be informed of the steps, if any, which may have been taken in relation to the offender under any law for the time being in force in that other district, and upon the receipt of such information the District Magistrate of the first district shall cancel from his register the entry relating to that offender.

(3) Upon the entry of the name and other particulars of a registered offender in any register in the State under sub-section (2), the provisions of this Act and the rules made thereunder shall apply to him as if he has been registered, in pursuance of a direction given under section 3, in the register of the district to which he has changed his ordinary residence.

9. (1) Subject to the provision of sub-section (3), the registration of a habitual offender under this Act shall, unless earlier cancelled, cease to be in force on the expiry of five years from the date of such registration, and on such cancellation of expiry the habitual offender shall cease to be a registered offender.

(2) Notwithstanding the cancellation, or expiry of duration, of registration a habitual offender may be re-registered in accordance with the provisions of this Act relating to registration, as often as he is convicted of one or more of the scheduled offences at any time after such cancellation, or expiry; and subject to the provisions of sub-section (3), the re-registration shall, unless earlier cancelled, cease to be in force on the expiry of five years from the date of such re-registration.

(3) Where a registered offender is, during the period of registration or re-registration, convicted of one or more of the scheduled offences and sentenced to a substantive term of imprisonment, the duration of registration or re-registration shall be extended for a period of five years from the date of his release from such imprisonment.

10. (1) Any person aggrieved by the registration or re-registration of his name under section 4, or as the case may be, section 9 or by an order under sub-section (2) of section 7, may within the prescribed period make a representation to the State Government against such registration, re-registration or order.

(2) The State Government shall, after considering the representation, and giving the aggrieved person an opportunity of being heard, either confirm or cancel the registration, re-registration or order, as the case may be, and shall in the case of confirmation record a brief statement of the reasons therefor.

Duration of  
registration  
and re-  
registration  
of habitual  
offenders.

Right to  
make  
representa-  
tions against  
re-registra-  
tion, etc.

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11. (1) If in the opinion of the State Government it is necessary or expedient in the interest of the general public so to do, the State Government may, subject to the provisions of sub-section (4), by order direct that any registered offender shall be restricted in his movements to such area, and for such period not exceeding three years, as may be specified in the order.

Power to restrict movements of registered offenders.

(2) Before making any such order the State Government shall take into consideration the following matters, that is to say,—

(a) the nature of the offences of which the registered offender has been convicted, and the circumstances in which the offences were committed;

(b) whether the registered offender follows any lawful occupation, and whether such occupation is conducive to an honest and settled way of life and is not merely a pretence for the purpose of facilitating the commission of crime;

(c) the suitability of the area to which his movements are to be restricted; and

(d) the manner in which the registered offender may earn his living within the restriction area, and the adequacy of arrangements, which are or are likely to be, available therefor.

(3) A copy of the order shall be served on the registered offender in the prescribed manner.

(4) The period specified in an order under sub-section (1) shall in no case extend beyond the period of registration or re-registration, as the case may be, referred to in section 9.

12. The State Government may, by order, cancel any order made under section 11 or alter any area specified in an order under that section :

Power to cancel or alter restrictions of movements.

Provided that before making such order, the State Government shall consider the matters referred to in sub-section (2) of section 11 in so far as they may be applicable.

13. (1) Subject to the provisions of sub-section (3), the powers of the State Government under sections 11 and 12 may be exercised also by a Magistrate having power to act under section 110 of the Code, but without prejudice to the exercise of his powers under that section of the Code.

Powers under sections 11 and 12 also exercisable by certain Magistrates.

(2) A Magistrate acting under section 11 or 12 shall follow, as nearly as may be, the procedure laid down in sections 112, 113, 114, 115 and 117 of the Code for an order requiring security for good behaviour:

Provided that the order in writing referred to in section 112 of the Code shall, in addition to setting forth the substance of the information received, state the term, not exceeding three years, during which the order of restriction shall be in force.

*Bombay Habitual Offenders Act, 1959.*

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(3) Where the State Government has already made an order under section 11 in respect of a habitual offender, the Magistrate shall not exercise any powers conferred by this section in respect of the same habitual offender, during any period in which the order of the State Government is in force.

## CHAPTER III.

## CORRECTIVE TRAINING OF HABITUAL OFFENDERS.

14. (1) For the purpose of placing therein such habitual offenders as are directed to receive corrective training under this Act, the State Governments may, by notification in the *Official Gazette*, establish and maintain in the State as many corrective settlements as it thinks fit.

(2) The State Government may also approve or certify any privately managed institution (whether known as a settlement or otherwise) as a corrective settlement for the purposes of this Act.

15. (1) Where the State Government is satisfied from the report of the District Magistrate or otherwise, that it is expedient with a view to the reformation of a registered offender and the prevention of crime, that the registered offender should receive training of a corrective character for a substantial period, the State Government may by order in writing direct that the registered offender shall receive training of a corrective character for such period, not exceeding the duration of his registration or re-registration, as may be specified in the order.

(2) Where a habitual offender, who is not more than forty years of age, —

(a) is convicted of any offence punishable with imprisonment, or

(b) is required in pursuance of section 110 of the Code to execute a bond for his good behaviour, and the Court or the Magistrate is satisfied from the evidence in the case and other materials on record that it is expedient with a view to his reformation and the prevention of crime, that he should receive training of a corrective character for a substantial period, the Court or the Magistrate may, in lieu of sentencing him for such offence or, as the case may be, requiring him to execute such bond, direct that he shall receive corrective training for such term of not less than two or more than five years, as the Court or the Magistrate may determine.

(3) Before giving any direction under sub-section (1) or sub-section (2) the State Government, the Court or the Magistrate, as the case may be, shall—

(a) consult the officer prescribed on the capacity of the corrective settlements to receive the habitual offender,

(b) take into consideration the physical and mental condition of the offender and his suitability for receiving corrective training in a corrective settlement, and



*Bombay Habitual Offenders Act, 1959.*

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(c) give a reasonable opportunity to the offender to show cause why such direction should not be given.

(4) A habitual offender, in respect of whom a direction to receive corrective training has been made, shall be placed in a corrective settlement for the term of his training, and while in such settlement shall be treated in such manner and receive such training as may be prescribed.

16. The State Government or any officer authorised by it in this behalf, may at any time by order in writing direct any habitual offender who may be in a corrective settlement to be transferred to another corrective settlement or to be discharged therefrom; and accordingly he shall be so transferred or as the case may be, discharged.

Power to transfer or discharge from corrective settlement.

**CHAPTER IV.****PENALTIES AND PROCEDURE.**

17. A habitual offender who without lawful excuse, the burden of proving which shall lie upon him,—

Penalty for failure to comply with certain provisions of the Act.

(a) fails to appear in compliance with a notice issued under section 4, or

(b) intentionally omits to furnish any information required under that section or furnishes as true any information which he knows, or has reason to believe, to be false or does not believe to be true, or

(c) refuses to allow his finger and palm impressions, foot-prints and photographs to be taken by any person acting under an order passed under section 6, or

(d) fails to comply with the provisions of sub-section (1) of section 7 or with an order of the District Magistrate under sub-section (2) thereof or with an order under section 11,

may be arrested without warrant and shall be punished—

(i) on first conviction, with imprisonment for a term which may extend to six months or with fine which may extend to two hundred rupees, or with both, and

(ii) on a second or subsequent conviction, with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees, or with both;

Provided that, if the court, after taking into consideration the offender's age and physical and mental condition and his suitability for receiving training of a corrective character in a corrective settlement, is satisfied that it is expedient with a view to his reformation and the prevention of crime, that he should receive training of a corrective character for a substantial period the court may, in lieu of sentencing the offender to any punishment under this section, direct, after giving him an opportunity of showing cause (and after consulting the officer prescribed on the capacity of the corrective settlements to receive him) that he shall receive corrective training in a corrective settlement for such term not exceeding three years, as it may determine.

*Bombay Habitual Offenders Act, 1959.*

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**18. If any person—**

(a) is found outside the area to which his movements have been restricted in contravention of the conditions under which he is permitted to leave such area, or

(b) escapes from any corrective settlement in which he is placed,

he may be arrested without warrant by a police officer, police patil or village watchman and taken before a Magistrate who, on proof of the facts, may order him to be removed to such area or to such corrective settlement, there to be dealt with in accordance with this Act and the rules made thereunder.

**19. (1)** Whoever, being a person in respect of whom a direction has been made under section 11 or section 15, and having been convicted of any of the scheduled offences falling under Part-I of the Schedule, is convicted of the same or of any other scheduled offence falling in that Part shall, on conviction, be punished with imprisonment for life or with imprisonment for a term which may extend to ten years.

(2) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law. XLV of 1860.

**20.** Whoever, being a person in respect of whom a direction has been made under section 11 or section 15, is found in any place under such circumstances as to satisfy the court—

(a) that he was about to commit or aid in the commission, of, theft or robbery, or

(b) that he was making preparation for committing theft or robbery, shall, on conviction, be punished with imprisonment for a term which may extend to three years, and shall also be liable to a fine which may extend to one thousand rupees.

**21.** If a police patil or a village watchman having an opportunity to arrest any person under section 18, fails to arrest him in circumstances which are not beyond his control, he shall on conviction be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees, or with both.

**CHAPTER V.****MISCELLANEOUS.**

**22.** No court shall question the validity of any direction or order issued under this Act.

**23.** No suit, prosecution or other legal proceedings shall lie against the State Government or any person for anything which is in good faith done or intended to be done under this Act.

*Bombay Habitual Offenders Act, 1959.*

24. The State Government may, by notification in the *Official Gazette*, direct that any power exercisable by it under this Act except the power under section 25 may also be exercised subject to such conditions (if any) as may be specified in the notification, by such officer not below the rank of a District Magistrate as may be specified therein.

Power to  
delegate.

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25. (1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act,

Power to  
make rules.

(2) In particular, and without prejudice to the generalty, or of the foregoing power such rules may provide for all or any of the following matters, namely :—

(a) the form of notice under section 4 and the manner in which such notice may be served;

(b) the form of the register of habitual offenders and the particulars to be entered therein;

(c) the authority to whom and the manner in which any change or intended change of ordinary residence shall be notified under sub-section (1) of section 7;

(d) the nature of restrictions to be observed by registered offenders whose movements have been restricted;

(e) the grant of certificate of identity to registered offenders and inspection of such certificates;

(f) the conditions under which the offenders may be permitted to leave the area to which their movements have been restricted or the corrective settlements in which they have been placed;

(g) the terms upon which offenders may be discharged from corrective settlements;

(h) the working, management, control and supervision of corrective settlements including the discipline and conduct of persons placed therein;

(i) the conditions for, and the manner of, approving or certifying privately managed settlements;

(j) the appointment of non-official visitors for corrective settlement;

(k) the conditions and circumstances under which members of the family of a habitual offender may be permitted to stay with him in a corrective settlement;

(l) the periodical review of the cases of all persons whose movements have been restricted or who are placed in corrective settlements under this Act;

(m) any other matter which is to be or may be prescribed under this Act.

(3) In making rules under this Act the State Government may provide that a contravention of any of the rules shall be punishable with fine which may extend to one hundred rupees.

*Bombay Habitual Offenders Act, 1959.*

<sup>1</sup> [(4) Every rule made under this section shall be laid, as soon as may be, after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the *Official Gazette*, the rule shall, from the date of publication of such notification, have effect only in such modified form or be of no effect, as the case may be ; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.]

Savings. 26. Nothing in this Act shall affect the powers of any Competent Authority under any other law for the time being in force to make an order of restriction or detention and any order passed or direction made under this Act in so far as it conflicts with any order made by a Competent Authority under such law shall be deemed to be inoperative while the order under such law remains in force.

Sal and savings. 27. On the commencement of this Act, the following Acts, that is to say,—

(1) the Bombay Habitual Offenders Restriction Act, 1947,

Bom.  
LI of  
1947.

(2) the Hyderabad Habitual Offenders (Restriction and Settlement) Act, 1954, and

Hyd.  
XXII of  
1954.

(3) the Saurashtra Habitual Offenders Restriction Act, 1951,  
shall stand repealed;

Sau.  
XXXI  
of  
1951.

Provided that such repeal shall not affect—

(a) the previous operation of any Act so repealed or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any Act so repealed;

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any Act so repealed;

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed :

<sup>1</sup> Sub-section (4) was substituted for the original by Mah. 35 of 1965, s.2.

*Bombay Habitual Offenders Act, 1959.*

Provided further that, subject to the preceding proviso, anything done or any action taken (including orders or rules made, notices issued and settlements established or approved) under any Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue in force accordingly unless and until superseded by anything done or any action taken under this Act.

**THE SCHEDULE**

[See section 2(h)]

**I**

**XLV of 1860.**      **Offences under the Indian Penal Code.**

**CHAPTER XII.****Sections.**

- 231 Counterfeiting coin.
- 232 Counterfeiting Indian coin.
- 233 Making or selling instrument for counterfeiting coin.
- 234 Making or selling instrument for counterfeiting Indian coin.
- 235 Possession of instrument or material for the purpose of using the same for counterfeiting.
- 239 Delivery of coin possessed with knowledge that it is counterfeit.
- 240 Delivery of Indian coin possessed with knowledge that it is counterfeit.
- 242 Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof.
- 243 Possession of Indian coin by person who knew it to be counterfeit when he became possessed thereof.

**CHAPTER XVI.**

- 304 Culpable homicide not amounting to murder.
- 307 Attempt to murder.
- 308 Attempt to commit culpable homicide.
- 311 Being a thug.
- 324 Voluntarily causing hurt by dangerous weapons or means.
- 325 Voluntarily causing grievous hurt.
- 326 Voluntarily causing grievous hurt by dangerous weapons or means.

*Bombay Habitual Offenders Act, 1959.*

- 327 Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
- 328 Causing hurt by means of poison, etc., with intent to commit an offence.
- 329 Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act.
- 332 Voluntarily causing hurt to deter public servant from his duty.
- 333 Voluntarily causing grievous hurt to deter public servant from his duty.
- 347 Wrongful confinement to extort property or constrain to illegal act.
- 365 Kidnapping or abducting with intent secretly and wrongfully to confine person.
- 366-A Procuration of minor girl.
- 366-B Importation of girl from foreign country.
- 368 Wrongfully concealing or keeping in confinement, kidnapped or abducted person.
- 369 Kidnapping or abducting child under ten years with intent to steal from its person.

## CHAPTER XVII.

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- 379 Theft.
- 380 Theft in dwelling house, etc.
- 382 Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.
- 384 Extortion.
- 385 Putting person in fear of injury in order to commit extortion.
- 386 Extortion by putting a person in fear of death or grievous hurt.
- 387 Putting a person in fear of death or of grievous hurt, in order to commit extortion.
- 392 Robbery.
- 393 Attempt to commit robbery.
- 394 Voluntarily causing hurt in committing robbery.
- 395 Dacoity.
- 397 Robbery or dacoity, with attempt to cause death or grievous hurt.
- 398 Attempt to commit robbery or dacoity when armed with deadly weapon.

*Bombay Habitual Offenders Act, 1959.*

- 399 Making preparation to commit dacoity.
- 400 Belonging to a gang of dacoits.
- 401 Belonging to a gang of thieves.
- 402 Assembling for purpose of committing dacoity.
- 411 Dishonestly receiving stolen property.
- 414 Assisting in concealment of stolen property.
- 451 House-trespass in order to commit offence punishable with imprisonment.
- 452 House-trespass after preparation for hurt, assault or wrongful restraint.
- 453 Lurking house-trespass or house-breaking.
- 454 Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment.
- 455 Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint.
- 456 Lurking house trespass or house breaking by night.
- 457 Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment.
- 458 Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.
- 459 Grievous hurt caused whilst committing lurking house-trespass or house-breaking.
- 460 All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

## II

CIV of 1956 . . Offence under the Suppression of Immoral Traffic in Women and Girls Act, 1956.

## Section.

- 4 Living on the earnings of prostitution.

## Universal Declaration of Human Rights

### Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore,

The General Assembly,

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by



teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

#### Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

#### Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

#### Article 3

Everyone has the right to life, liberty and security of person.

#### Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

#### Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

#### Article 6

Everyone has the right to recognition everywhere as a person before the law.

#### Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

#### Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

#### Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

#### Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

#### Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier

penalty be imposed than the one that was applicable at the time the penal offence was committed.

#### Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

#### Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

#### Article 15

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

#### Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

#### Article 17

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

#### Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

#### Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

#### Article 20

1. Everyone has the right to freedom of peaceful assembly and association.
2. No one may be compelled to belong to an association.

#### Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

#### Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

#### Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

#### Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

## Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

## Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have a prior right to choose the kind of education that shall be given to their children.

## Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

#### Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

#### Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.
2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

#### Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.



# Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14

Rome, 4.XI.1950

This page contains the text of the Convention as amended by its Protocol No. 14 (CETS No. 194) as from the date of its entry into force on 1 June 2010.

The text of the Convention had been previously amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols were replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, was repealed and Protocol No. 10 (ETS no. 146) had lost its purpose.

Protocols: No. 1 | No. 4 | No. 6 | No. 7  
No. 12 | No. 13 | No. 14  
No. 15 | No. 16  
Français  
Translations

1950 version of the Convention  
Preparatory works

Chart of Declarations under former Articles 25 and 46 of the ECHR  
Agreement of Madrid (12.V.2009)

Steering Committee for Human Rights (CDDH)  
European Court of Human Rights

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;



Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

## **Article 1 – Obligation to respect human rights**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

## **Section I – Rights and freedoms**

### **Article 2 – Right to life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
  - a. in defence of any person from unlawful violence;
  - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

### **Article 3 – Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### **Article 4 – Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term "forced or compulsory labour" shall not include:
  - a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c. any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - d. any work or service which forms part of normal civic obligations.

### **Article 5 – Right to liberty and security**

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - a. the lawful detention of a person after conviction by a competent court;
  - b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or

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extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

#### Article 6 – Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b. to have adequate time and facilities for the preparation of his defence;
  - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### Article 7 – No punishment without law

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### Article 8 – Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### Article 9 – Freedom of thought, conscience and religion

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1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

#### **Article 10 – Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### **Article 11 – Freedom of assembly and association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

#### **Article 12 – Right to marry**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

#### **Article 13 – Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

#### **Article 14 – Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### **Article 15 – Derogation in time of emergency**

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

#### **Article 16 – Restrictions on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

#### **Article 17 – Prohibition of abuse of rights**

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

#### **Article 18 – Limitation on use of restrictions on rights**

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

### **Section II – European Court of Human Rights**

#### **Article 19 – Establishment of the Court**

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

#### **Article 20 – Number of judges**

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

#### **Article 21 – Criteria for office**

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

#### **Article 22 – Election of judges <sup>1</sup>**

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

#### **Article 23 – Terms of office and dismissal <sup>2</sup>**

1. The judges shall be elected for a period of nine years. They may not be re-elected.
2. The terms of office of judges shall expire when they reach the age of 70.
3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

#### **Article 24 – Registry and rapporteurs <sup>2</sup>**

1. The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court.
2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's registry.

## Article 25 – Plenary Court <sup>2</sup>

The plenary Court shall

- a. elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
- b. set up Chambers, constituted for a fixed period of time;
- c. elect the Presidents of the Chambers of the Court; they may be re-elected;
- d. adopt the rules of the Court;
- e. elect the Registrar and one or more Deputy Registrars;
- f. make any request under Article 26, paragraph 2.

## Article 26 – Single-judge formation, committees, Chambers and Grand Chamber <sup>2</sup>

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
4. There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

## Article 27 – Competence of single judges <sup>3</sup>

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
2. The decision shall be final.
3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

## Article 28 – Competence of committees <sup>4</sup>

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,
  - a. declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
  - b. declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established case-law of the Court.
2. Decisions and judgments under paragraph 1 shall be final.
3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place

of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.b.

#### **Article 29 – Decisions by Chambers on admissibility and merits <sup>1</sup>**

1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

#### **Article 30 – Relinquishment of jurisdiction to the Grand Chamber**

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

#### **Article 31 – Powers of the Grand Chamber <sup>1</sup>**

The Grand Chamber shall:

- a. determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;
- b. decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and
- c. consider requests for advisory opinions submitted under Article 47.

#### **Article 32 – Jurisdiction of the Court <sup>1</sup>**

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

#### **Article 33 – Inter-State cases**

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

#### **Article 34 – Individual applications**

Chart of Declarations under former Articles 25 and 46 of the ECHR

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

#### **Article 35 – Admissibility criteria <sup>1</sup>**

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that

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- a. is anonymous; or
  - b. is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that :
- a. the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or
  - b. the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

#### **Article 36 – Third party intervention <sup>1</sup>**

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.
3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

#### **Article 37 – Striking out applications**

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that:
  - a. the applicant does not intend to pursue his application; or
  - b. the matter has been resolved; or
  - c. for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

#### **Article 38 – Examination of the case <sup>4</sup>**

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

#### **Article 39 – Friendly settlements <sup>4</sup>**

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
2. Proceedings conducted under paragraph 1 shall be confidential.
3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

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**Article 40 – Public hearings and access to documents**

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

**Article 41 – Just satisfaction**

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

**Article 42 – Judgments of Chambers**

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

**Article 43 – Referral to the Grand Chamber**

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

**Article 44 – Final judgments**

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final:
  - a. when the parties declare that they will not request that the case be referred to the Grand Chamber; or
  - b. three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
  - c. when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

**Article 45 – Reasons for judgments and decisions**

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

**Article 46 – Binding force and execution of judgments <sup>1</sup>**

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the



Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

#### **Article 47 – Advisory opinions**

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

#### **Article 48 – Advisory jurisdiction of the Court**

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

#### **Article 49 – Reasons for advisory opinions**

1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

#### **Article 50 – Expenditure on the Court**

The expenditure on the Court shall be borne by the Council of Europe.

#### **Article 51 – Privileges and immunities of judges**

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

### **Section III – Miscellaneous provisions**

#### **Article 52 – Inquiries by the Secretary General**

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

#### **Article 53 – Safeguard for existing human rights**

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

#### **Article 54 – Powers of the Committee of Ministers**

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

#### **Article 55 – Exclusion of other means of dispute settlement**

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The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

#### Article 56 – Territorial application

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

#### Article 57 – Reservations

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.
2. Any reservation made under this article shall contain a brief statement of the law concerned.

#### Article 58 – Denunciation

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

#### Article 59 – Signature and ratification , <sup>1</sup>

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The European Union may accede to this Convention.
3. The present Convention shall come into force after the deposit of ten instruments of ratification.
4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

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Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

Notes:

- 1 Text amended according to the provisions of Protocol No. 14 (CETS No. 194).
- 2 Article renumbered, heading and text amended according to the provisions of Protocol No. 14 (CETS No. 194).
- 3 New article according to the provisions of Protocol No. 14 (CETS No. 194).
- 4 Heading and text amended according to the provisions of Protocol No. 14 (CETS No. 194).

## International Covenant on Civil and Political Rights

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Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

### Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

### PART I

## Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## PART II

## Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

## Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

## PART III

## Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

#### Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

#### Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;



(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

#### Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

#### Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

#### Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation. Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

#### Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

#### Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation. 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

#### Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

#### Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

#### Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

#### Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

#### Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

#### Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

#### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

#### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

#### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

#### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

#### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all



persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

#### Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

#### PART IV

#### Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

#### Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

#### Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

#### Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

#### Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4. 2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

#### Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

#### Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The

election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

#### Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

#### Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

#### Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

#### Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

#### Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
  - (a) Twelve members shall constitute a quorum;
  - (b) Decisions of the Committee shall be made by a majority vote of the members present.

#### Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights: (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
  - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

#### Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

#### Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

#### Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

#### Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

### PART V

#### Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

#### Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.



PART VI

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Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

## Article 50

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The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

## Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

## Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

**Article 53**

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

## Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly  
resolution 44/25 of 20 November 1989

entry into force 2 September 1990, in accordance with article 49

### Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

## **PART I**

### **Article 1**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article 3**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

### **Article 4**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

### **Article 5**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

### **Article 6**

1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

#### Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant International Instruments in this field, in particular where the child would otherwise be stateless.

#### Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

#### Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

#### Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their

own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

#### **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

#### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

#### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

#### **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### **Article 15**

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

#### **Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

#### **Article 17**

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

#### **Article 18**

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

#### **Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### **Article 20**



1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

#### **Article 21**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

#### **Article 22**

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

#### **Article 23**

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.
4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
  - (a) To diminish infant and child mortality;
  - (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
  - (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
  - (d) To ensure appropriate pre-natal and post-natal health care for mothers;
  - (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
  - (f) To develop preventive health care, guidance for parents and family planning education and services.
3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

**Article 25**

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

**Article 26**

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

**Article 27**

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy

throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### **Article 29**

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

#### **Article 30**

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

#### **Article 31**

- 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
- 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

#### **Article 32**

- 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
- 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum ages for admission to employment;
  - (b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

### **Article 33**

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

### **Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

### **Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

### **Article 36**

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

### **Article 37**

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

### **Article 38**

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

#### Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

#### Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an Interpreter If the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

#### **Article 41**

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

### **PART II**

#### **Article 42**

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

#### **Article 43**

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute

a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

#### **Article 44**

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

#### **Article 45**



In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

### PART III

#### Article 46

The present Convention shall be open for signature by all States.

#### Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

#### Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

#### Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any

amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

#### **Article 51**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

#### **Article 52**

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

#### **Article 53**

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

#### **Article 54**

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. IN WITNESS THEREOF the undersigned plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.